January 31, 2023

In re: ENSIGN PEAK ADVISORS, INC.

MEMORANDUM OF DAVID A. NIELSEN

submitted to the

U.S. SENATE FINANCE COMMITTEE

and its

SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT

Michael A. Sullivan, Esq.
msullivan@finchmccranie.com
Finch McCranie, LLP
229 Peachtree Street, NE, Suite 2500
Atlanta, Georgia 30303
404-658-9070
www.finchmccranie.com

Richard R. Rubin, Esq.
richard.rubin@rubinlaw.us
Rubin Law Assoc. PC
175 Ranchette Road
Milton, Georgia 30004
404-718-0687
www.rubinlaw.us

Counsel for David A. Nielsen

INTRODUCTION

The First Amendment empowers every citizen to petition Congress. To address systematic accounting fraud, false statements, and abuse of tax-exempt status by a $100 billion securities investment business, David A. Nielsen respectfully submits this Memorandum and supporting materials to the U.S. Senate Finance Committee and its Subcommittee on Taxation and IRS Oversight.

Oversight is needed to rectify a glaring double standard in tax enforcement: tolerating influential, politically-connected organizations that use fraud and false statements to unlawfully claim tax-exempt status. Since most taxpaying citizens are held accountable if they violate our tax laws, the result is that law-abiding Americans not only bear a greater share of the tax burden, but also lose confidence in the fairness of our tax system.[1]

For 22 years, the corporation known as Ensign Peak Advisors, Inc. ("EPA") has employed corrupt practices—falsified books and records, false statements, and deception—to masquerade as tax-exempt, even though EPA failed to engage in any charitable activities for 22 years. Moreover, for many years EPA management have operated corruptly, without basic controls and with fraudulent accounting, and have conspired to hide EPA's behavior and assets from the IRS and other government entities. EPA's managers have also regularly permitted large assets to be "deleted" from EPA's books, which is strong evidence of "private inurement." With such evidence of private inurement and with no charitable activities over the period, it is clear that EPA has never been tax-exempt.

EPA's ongoing deception to masquerade as tax-exempt also has allowed it to compete illegally—and unfairly—with other securities investment firms.

As a result, EPA improperly has reaped billions in untaxed income that should have been taxed. EPA is thus liable to the Treasury for billions in unpaid tax and penalties, as shown by the evidence discussed here.

This Memorandum summarizes the evidence and analysis that Mr. Nielsen, through counsel, has already provided to the IRS and DOJ in November 2020, with an update in March 2022. The IRS and DOJ deserve credit for their many successes despite budgetary constraints, but currently may face other demands that make it challenging to deal with powerful, well-connected organizations. Oversight will ensure that these agencies do not shrink from the responsibility of correcting this double standard by enforcing existing laws violated by EPA, and by holding EPA and its management accountable. Other taxpayers should no longer be forced to bear the tax burden of wealthy organizations that fraudulently claim tax-exempt status.

Finally, experience with compliance shows that every responsible organization has law-abiding people who want the organization to operate lawfully and ethically. Principled oversight and a commitment to compliance will empower those voices to identify law-breaking, to take corrective action, and to create a better organization in which they can take pride.

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[1] "Oversight is considered fundamental to making sure that laws work and are being administered in an effective, efficient, and economical manner." CRS Report RL30240, *Congressional Oversight Manual*, 2 (Oversight Manual). *See also id*. at 1:

> Congress's oversight role is also significant because it ***shines the spotlight of public attention on many critical issues***, which enables ***lawmakers and the general public to make informed judgments about executive performance***. Woodrow Wilson, in his classic 1885 study *Congressional Government*, emphasized that the "informing function should be preferred even to its [lawmaking] function." He added that ***unless Congress conducts oversight of administrative activities, the "country must remain in embarrassing, crippling ignorance of the very affairs which it is most important it should understand and direct.***" (Quoting Woodrow Wilson, *Congressional Government* (Boston: Houghton Mifflin, 1885), p. 303)(emphasis supplied).

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MEMORANDUM OF DAVID A. NIELSEN
submitted to the
U.S. SENATE FINANCE COMMITTEE
and its
SUBCOMMITTEE ON TAXATION AND IRS ENFORCEMENT[2]

This Memorandum on behalf of David A. Nielsen ("Mr. Nielsen") summarizes evidence of false statements, systematic accounting fraud, private inurement, violations of the Internal Revenue Code and other federal statutes, and a "*Klein* conspiracy"[3] by Ensign Peak Advisors, Inc ("EPA") and others.

For at least 22 years,[4] EPA and certain senior executives have perpetrated an unlawful scheme that relies on ***willfully and materially false statements*** to the IRS and the SEC, so this for-profit, securities investment business that unfairly competes with large hedge funds can ***masquerade as a tax-exempt, charitable organization***. In addition, evidencing ***private inurement***, EPA's senior managers for years have regularly permitted large assets to simply "disappear" from EPA's books, and have failed to apply basic internal controls ***to themselves***. EPA and those corruptly assisting it have violated various federal criminal statutes by their fraudulent conduct, including through:

1. ***A Klein conspiracy*** to subvert the lawful functioning of the IRS, through EPA's false and fraudulent statements in SEC and IRS filings, and other corrupt actions intended to conceal EPA's billions of dollars of income obtained through EPA's $100 billion ***for-profit*** investment business—income on which EPA should have paid tax***;***

[2] This evidence and accompanying analysis by Mr. Nielsen and his counsel have been submitted to the IRS and the DOJ Tax Division in November 2020, with an update in March 2022. This Memorandum substantially expands on the *pro se* submission that Mr. Nielsen made to the IRS Whistleblower Office in November 2019, which was a "placeholder" submission intended to secure protections against retaliation and was prepared without assistance of counsel. That *pro se* placeholder submission, which contains only a fraction of the evidence and analysis presented here, was publicly released in December 2019 by a third-party without Mr. Nielsen's knowledge or consent.

This Memorandum also includes more recent and compelling evidence that EPA, after learning of Mr. Nielsen's *pro se* submission, has failed to dispute and has "admitted by conduct" significant wrongdoing described in this Memorandum.

[3] As is well-established, a conspiracy to defraud the United States by frustrating the lawful functions of the IRS constitutes a "*Klein* conspiracy," which refers to *United States v. Klein*, 247 F.2d 908, 919-21 (2d Cir. 1957).

[4] In this Memorandum references to EPA's activities generally refer to the relevant 22-year period from its 1997 formation through Mr. Nielsen's departure from EPA in 2019, as well as EPA's admissions by conduct of its wrongdoing commencing in 2020. This Memorandum is based on the facts and evidence observed and reported by Mr. Nielsen.

2. ***More than 260 fraudulent SEC filings*** from 2008 through 2019—filed in the names of other entities EPA controlled, instead of EPA's name. These 260+ fraudulent filings were intended to disguise EPA's billions in investments and thus help EPA evade tax, in furtherance of a *Klein* conspiracy;

3. ***More than ten years of willful, material false statements*** to the IRS to conceal the growing billions in EPA's assets, which EPA officials falsely attested each year were ***less than one-thousandth of their actual value***. These systematic false statements in annual filings of Form 990-T, from at least 2007 through 2019, also furthered this *Klein* conspiracy by helping conceal that EPA never operated as a tax-exempt, charitable organization;

4. ***Falsely denying under oath for 10+ years—***and only recently ***admitting after seeing Mr. Nielsen's pro se IRS submission—***EPA's ownership of ***foreign bank and investment accounts***. EPA's failing to disclose these foreign accounts, and EPA's 10+ years of false statements denying their existence, concealed EPA's foreign accounts (estimated to exceed $9 billion) and thus helped EPA evade tax, in furtherance of that *Klein* conspiracy; and

5. ***Tax evasion by EPA***.

This *Klein* conspiracy, which includes persons/entities outside EPA who facilitated EPA's false statements and fraudulent filings described here, has resulted in billions of dollars in unpaid federal tax by EPA. Separately, EPA is liable for at least $2 billion in FBAR penalties for failing to disclose its billions in foreign accounts for 10+ years.[5]

As demonstrated below, ***EPA has never been tax-exempt.*** That conclusion is inescapable, based on each of the following three independent grounds:

- First, in EPA's 22-year history from 1997 through 2019, EPA engaged in ***no "religious, charitable or . . . educational" activities***—the essentials of what IRC § 501(c)(3) requires to be exempt.

- Second, EPA's only distributions over 22 years were to fund ***classic "private interests"***—the ***for-profit*** operations of a luxury shopping mall and an insurance company. EPA's spending $2 billion to serve "private interests"—and not charitable purposes—is enough, by itself, to defeat exempt status.

- Third, ***private inurement*** is yet another independent reason why EPA fails exempt status. Evidence of private inurement includes that senior EPA officials frequently authorized the "deletion" from its books of assets exceeding $1 million, and failed to apply basic internal controls to themselves. This fraudulent accounting and frequent disappearance of EPA's assets is strong evidence of private inurement.

[5] 31 U.S.C. § 5321(c) (specifying penalties for willfully failing to file Report of Foreign Bank and Financial Accounts (FBAR)).

January 2023 Update:

EPA's Recent Admissions *Since Reviewing Mr. Nielsen's Original IRS Submission*

Since December 2019, EPA has reacted to unexpectedly being able to review Mr. Nielsen's *pro se* Form 211 submission to the IRS made in November 2019.[6] Knowing then that Mr. Nielsen's IRS submission would bring scrutiny to EPA's previously concealed $100 billion investment business, EPA has recently made the following admissions and "admissions by conduct," which further establish its liability for the various violations revealed by Mr. Nielsen:

A. **EPA now admits having foreign accounts, *after denying it under oath for 10+ years*:** Mr. Nielsen's prior submissions demonstrated that EPA has ***falsely denied under oath each year since at least 2007*** that EPA has long had foreign bank and investment accounts, estimated to exceed $9 billion—and thus EPA is liable for FBAR penalties of more than $2 billion. Now, EPA has finally admitted in a recently published Form 990-T filing in November 2020 (for 2019) that EPA ***does have foreign bank and investment accounts.*** EPA's admission of having previously undisclosed foreign accounts thus should subject EPA to more than $2 billion in FBAR penalties. (See Exhibit 2k, EPA's recently published 2019 Form 990-T filing.)[7] Further, EPA's now-obvious false statements over 10+ years that it had no such foreign accounts are also acts in furtherance of the *Klein* conspiracy.

   Still, even though EPA recently has stopped falsely denying under oath that it ***has*** foreign accounts, EPA's recent 990-T filing for 2019 ***continues to flout its IRS disclosure obligations and conceal information***. For example, instead of providing the names of the countries where it holds foreign accounts, as required by Form 990-T, EPA continues to conceal that information by stating as the location of its foreign accounts, only "VARIOUS COUNTRIES."

   Similarly, although the Instructions for Form 990-T unambiguously require that EPA "[e]nter the total of the end-of-year assets from the organization's books of account," EPA ***still answered deceptively*** in this 2019 return to avoid disclosing ***what EPA knew***—that EPA has always had ***billions*** in assets ***since its formation in 1997***. The deception began in 2007 with the false statement of EPA's having only "$1,000,000" in assets. In the 2019 filing, EPA ***continued to withhold that required information*** from the IRS, and to repeat the annual, false and deceptive statement, "OVER 1,000,000." Moreover, it is difficult to imagine how EPA's long-time return preparer would not have known the falsity of these statements as well.

B. **EPA has suddenly changed its position after *260+ fraudulent filings of SEC Form 13F:*** EPA disguised its massive investment business by causing filings with the SEC of Form 13F in the names of various LLCs more than 260 times over 10+ years, rather than in EPA's own name. Upon learning of Mr. Nielsen's IRS submission in December 2019, EPA abruptly began filing in its own

[6] As noted, without Mr. Nielsen's knowledge or consent, a third-party published Mr. Nielsen's *pro se* IRS submission on the internet in December 2019.

[7] *See* https://projects.propublica.org/nonprofits/display_990/841432969/download990pdf_09_2021_prefixes_81-93%2F841432969_201912_990T_2021092218968613.

name as required. EPA's change in approach is an admission by conduct that its more than 260 fraudulent SEC filings were improper, and were ***acts in furtherance of a Klein conspiracy to defraud the IRS***, by concealing its massive securities investment business. (*See* Section II-H below).

C. <u>EPA has both admitted and not disputed the essential facts that make clear EPA is not tax-exempt</u>. Since December 2019, EPA officials have commented on the evidence revealed by Mr. Nielsen's *pro se* IRS submission—both in statements to the press[8] and in filings in litigation in which Mr. Nielsen is not a party.[9] ***In all of those public statements known to Mr. Nielsen, EPA officials have not disputed two essential facts, either one of which is sufficient to defeat EPA's claim to exempt status:***

a. EPA engaged in ***no "religious, charitable or . . . educational" activities*** in the entire relevant period, 1997-2019, which are essential requirements to be exempt; and

b. EPA's only distributions over 22 years were for the ***for-profit*** operations of an insurance company and a luxury shopping mall. This was approximately $2 billion to fund classic ***"private" interests.***

In sum, EPA's disrespect for the tax laws and its disclosure obligations have become well known, because of the media attention that followed the third party's unauthorized disclosure of Mr. Nielsen's *pro se* filing. Ordinary taxpayers now see that, while they are expected to honor the tax laws, a double standard in enforcement exists with respect to a wealthy and politically-connected organization such as EPA. If the IRS and DOJ do not hold EPA and its management accountable, this case will erode respect for the tax laws and criminal statutes by every American and every other entity required to pay taxes. That result also would encourage fraudulent claims of exempt status and weaken tax administration within the tax-exempt sector generally, and within non-exempt religious organizations in particular.

I. <u>Executive Summary</u>

For-profit businesses must pay taxes, regardless of who owns and operates them. For more than 150 years, The Church of Jesus Christ of Latter-day Saints (the "Church") has operated *for-profit* businesses that have included one of the nation's first department stores,[10] shopping centers, real estate holding companies, and media

[8] For example, an article in the *Wall Street Journal* of February 8, 2020 records the responses of EPA officials to Mr. Nielsen's *pro se* IRS submission. *See* Exhibit 5. "The Mormon Church Amassed $100 Billion. It was the Best-Kept Secret in the Investment World," *Wall Street Journal* (Feb. 8, 2020). As appears from the title of the article, the *WSJ* describes the fund as a "secret" in the "investment world," and within the article describes the fund as "one of the world's largest investment funds," "a behemoth rivaling Wall Street's largest firms," and "The Quiet Giant."

[9] *See Huntsman v. Corporation of the President of the Church of Jesus Christ of Latter-day Saints*, NO. 2:21-cv-02504 SVW (SK), C.D. California, *on appeal, Huntsman v. Corporation of the President of the Church of Jesus Christ of Latter-day Saints,* NO. 21-56056, Ninth Circuit Court of Appeals.

[10] *See* https://en.wikipedia.org/wiki/ZCMI.

companies.[11] With one exception, these for-profit businesses are **not** the subject of this Memorandum, as they pay income tax and other taxes on their operations.

This Memorandum instead concerns EPA, another ***profit-making corporation*** organized by the Church, that has ***evaded paying taxes*** for more than two decades. This separate corporation, EPA, has ***not engaged in any "religious, charitable … or educational" activities*** for 22 years, and instead has operated a highly lucrative, profit-making securities investment business and accumulated a securities investment fund currently valued at more than ***$100 billion***.

Churches are allowed to invest their funds, but those funds are typically available to be reached by creditors. Consequently, EPA was formed as a separate corporation, and EPA's funds have been placed beyond the reach of the Church's creditors. However, a further direct consequence of forming EPA as a separate corporation is that ***EPA's income is not covered by the Church's tax-exemption***; as a result, EPA's income would be subject to tax unless EPA qualified as exempt from tax in its own right.

To make it appear that EPA qualified as tax-exempt in its own right, EPA's organizers deceptively represented that EPA would be "operated exclusively for religious, charitable … or educational purposes," and as an "integrated auxiliary" and a "supporting" charitable organization of the Church. See Exhibit 1, Articles of Incorporation.

However, for each of three independent reasons, EPA has met none of these requirements of tax-exempt status, and has failed to qualify as exempt as an "Integrated Auxiliary," "supporting" organization, or on any other basis.

First, EPA was not "operated exclusively for religious, charitable … or educational purposes," as required to be exempt under IRC § 501(c)(3). In 22 years, EPA ***has not engaged in any "religious, charitable … or educational" activities.*** The Tax Court has repeatedly held that accumulation of wealth without sufficient "religious, charitable … or educational" activities disqualifies a corporation from exempt status.[12]

Second, also disqualifying is that EPA has served classic "***private interests.***" EPA has spent $2 billion to fund a luxury shopping mall and an insurance company, in its only distributions in the relevant period (1997-2019). That fact alone also precludes exempt status.[13]

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[11] *See Follow the Profit: A Guide to the LDS Church's For-Profit Companies*, https://www.ldsdaily.com/church-lds/follow-profit-guide-lds-churchs-profit-companies/.

[12] *See, e.g., Make A Joyful Noise, Inc v. Commissioner*, 56 T.C.M. 1003 (1989); *Presbyterian and Reformed Publishing Co. v. CIR*, 79 TC 1070 (1982); *Western Catholic Church v. Commissioner*, 73 T.C. 196 (1979) (all discussed below). Courts have disallowed exempt status for organizations like EPA whose principal activity is securities trading. *See, e.g., Randall Foundation v. Riddell*, 244 F.2d 803 (9th Cir. 1957). By comparison, EPA (a) has accumulated *far more wealth* than the organizations in any of these cases—more than $100 billion—by pursuing its sole business as an investment firm; and (b) has performed *far fewer (i.e., zero) religious, charitable, or educational activities in the relevant 22-year period*.

[13] "An organization is not organized or operated exclusively for one or more [exempt] purposes . . . unless it serves a public rather than a private interest." 26 C.F.R. § 1.501(c)(3)-1(d)(1)(ii).

Third, evidence of ***private inurement*** is a separate, independent basis why EPA is not exempt. EPA's senior managers, who have sophisticated financial backgrounds, have avoided basic accounting and financial controls over EPA's billions in assets. Senior EPA officials gave directions that caused assets in excess of $1 million to simply "disappear" from EPA's books ***for apparently at least a decade (2006-2016).*** This regular "disappearance" of assets from EPA's books, EPA's lack of controls for senior officials, and the resulting unreliability of EPA's records, are not only strong evidence of private inurement, but also mean that EPA cannot carry ***its burden*** of proving exempt status by demonstrating the absence of private inurement.[14]

Thus, EPA fails to meet the requirements for exempt status, and has never been tax-exempt. Nonetheless, EPA has failed to file income tax returns or pay income tax since its formation in 1997. Instead, through ongoing fraud, deception, and concealment, EPA has falsely represented itself as tax-exempt, has evaded payment of taxes, and has falsely denied having FBAR filing obligations for its concealed foreign bank accounts that it finally admits having.

In criminal conduct, EPA has engaged in a *Klein* conspiracy to defraud the IRS by pretending to be tax-exempt while concealing and falsifying the facts of its massive securities investment business. In addition, EPA engaged in substantive criminal offenses based on:

1. **Fraudulent filings with the SEC:** To conceal its massive securities investment business, from 2007 through 2019, EPA caused ***more than 260 fraudulent filings of Forms 13F*** to be made with the SEC—in the names of other entities, rather than in its own name. Filing in other entities' names—rather than in EPA's own name as required—concealed the size and existence of EPA's operations.

2. **False statements to the IRS**: Also to hide EPA's securities investment enterprise, from at least 2007 to 2019, EPA through its senior managers has repeatedly made material false statements in EPA's annual Form 990-T filings with the IRS. These false statements (a) grossly misrepresented the size of EPA's assets as ***1/1000 of their actual value***; and (b) falsely denied the existence of EPA's foreign accounts, valued in the billions of dollars.

EPA's deception and false statements have paid it handsome rewards. These false statements have hidden from the IRS the nature and $100 billion size of EPA's investment fund, and the existence of EPA's billions in foreign accounts.[15] As a result, thus far EPA has evaded payment of more than $20 billion in taxes, as outlined below. In addition, EPA's consistent, false denials of EPA's ownership of foreign accounts have also concealed EPA's liability for substantial FBAR penalties, in excess of $2 billion.

David A. Nielsen, a lifelong Church member with Wall Street experience, was recruited by EPA in 2010. He left a financially lucrative career to work for EPA, which he believed would be a worthwhile cause. When Mr. Nielsen became aware that EPA served no charitable or religious purpose, and that EPA's management led to

[14]*See, e.g., Airlie Foundation, Inc v. United States*, 826 F. Supp. 537, 548 (D.D.C. 1993)("[N]o part of an organization's net earnings may inure to the benefit of any private shareholder or individual." *See also id*. at 550 ("The plaintiff bears the burden of proof to demonstrate that insiders do not benefit from the tax-exempt organization, especially where the facts indicate transactions arguably not on arm's length terms.'"

[15] Hiding the size of its investment fund allowed EPA to hide the fact that it was hoarding assets—rather than making charitable distributions.

assets "going missing" within EPA, he attempted to correct these problems. However, EPA's principals continuously refused to take corrective action. Finally, in 2019, Mr. Nielsen took the courageous step of resigning, and then provided the IRS Whistleblower Office with a *pro se* submission in November 2019.

With counsel, Mr. Nielsen has outlined in this Memorandum the factual and legal bases establishing (1) the *Klein* conspiracy and other criminal violations by EPA, and (2) EPA's tax liability for billions in unpaid taxes, and more than $2 billion in FBAR penalties.

This case is important. It concerns clear examples of criminal conduct. If EPA is held accountable, that result will promote compliance in the tax-exempt sector, and will discourage fraudulent attempts by other organizations tempted to abuse exempt status.

If EPA is not held accountable, however, this case will undermine confidence among ordinary citizens that our tax laws are enforced even-handedly when wealthy, influential organizations are involved. That result would also encourage fraudulent claims of exempt status within the tax-exempt sector generally, and by non-exempt religious organizations in particular.

II. Factual Background

The "relevant time period" for this submission is 1997 (the year of EPA's formation) until at least November 2019, when Mr. Nielsen provided his *pro se* submission to the IRS.[16]

A. With a history of operating "for-profit" businesses, Church leaders decided to incorporate EPA in 1997.

Continuing a long history of operating for-profit businesses,[17] in 1997 Church leaders made a decision to form another separate corporation known as Ensign Peak Advisors, Inc. EPA was capitalized by transferring approximately $10 billion received from "tithing" by members of the Church.

The facts and evidence of EPA's actions over the next 22 years reveal EPA's true purpose: (a) this separate corporation, EPA, ***never engaged*** ***in any "religious, charitable … or educational" activities;*** (b) EPA instead operated a ***profit-making*** securities investment business and accumulated a fund that would grow to $100 billion by 2019; and (c) EPA's only distributions over those 22 years were to fund ***for-profit*** activities—$2 billion to an insurance company and a shopping mall, which are "private" interests that defeat exempt status.

[16] Moreover, EPA's actions since learning of Mr. Nielsen's *pro se* IRS submission show its consciousness of guilt of its wrongdoing, as discussed below, as EPA has since begun to take actions that it had failed to take during the relevant period of 1997 to November 2019.

[17] *See* footnotes 10 and 11 above.

EPA's incorporation helped protect the assets that EPA acquired: although a church is allowed to invest its funds, those funds are typically not protected from creditors of the church. Forming EPA as a separate corporation placed EPA's funds outside the reach of the Church's creditors.[18]

But Church leaders apparently wanted only the *benefits* of EPA's separate corporate status, and were willing to mislead to avoid the *burdens*. One unavoidable consequence of forming EPA as a separate corporation is that EPA's income was not covered by the Church's tax-exemption. As a result, ***unless EPA qualified as tax-exempt in its own right, EPA's income was subject to tax.***

It was impossible, however, for EPA to qualify as tax-exempt because EPA ***never engaged in any "religious, charitable … or educational" activities—which is precisely what EPA's 22-year history from 1997-2019 shows.*** Nonetheless, to create the appearance that EPA qualified as tax-exempt on its own, EPA's organizers deceptively represented in its Articles of Incorporation that EPA would be "operated exclusively for religious, charitable . . . or educational purposes," and as an "integrated auxiliary" and a "supporting" charitable organization of the Church.[19]

As shown below, EPA has met none of these requirements of tax-exempt status, as it was not "operated exclusively for religious, charitable … or educational purposes," as required to be exempt under IRC § 501(c)(3). Moreover, EPA also has failed to qualify as exempt as an "Integrated Auxiliary," "supporting" organization, or on any other basis, as each such basis first requires that EPA satisfy the requirements of IRC sections 501(c)(3) and 509(a), as discussed in Section IV below.

EPA's deception did not end there. As shown in the next sections, EPA and its principals caused ***more than 260 fraudulent filings*** with the SEC, and made ***regular, material false statements to the IRS*** on Form 990-T filings, to conceal the size of EPA's assets and the existence of billions of dollars in foreign accounts. Through that fraud, EPA concealed that it failed to meet the requirements for being tax-exempt.

B. EPA's principals have sophisticated financial backgrounds.

EPA has been managed by persons with sophisticated financial backgrounds in the relevant period (1997-2019):

1. President – EPA had the same President and Managing Director since EPA was formed in 1997 until recently, when he handed over the President position to EPA's Chief Investment Officer (CIO).

   Before joining EPA, the former President owned and managed a successful hedge fund.[20] He retained an interest in this hedge fund for at least some time while employed by EPA. He has also worked as a professor at Brigham Young University.

   He holds a Ph.D. in Finance and an MS degree in Economics from Stanford University, as well as an MBA and BA degrees in Physics from Brigham Young University. He is widely recognized as an

[18] An additional benefit of forming EPA was to conceal from Church members the huge size of EPA's fund, so tithing was not discouraged.

[19] *See* Exhibit 1, EPA's Articles of Incorporation.

[20] EPA's former President was Chairman of Analytic Investors, LLC.

authority in relation to securities investment, and in particular, in relation to quantitative investment research. He has authored numerous articles and papers on the subject.

2. Chief Investment Officer – EPA had the same Chief Investment Officer (CIO) for many years. He is currently the President and CIO of EPA.

   Before joining EPA, he had a successful career at top Wall Street firms, including as a Managing Director for Credit Suisse (where he managed an internal hedge fund on a proprietary trading desk) and as an Analyst at UBS. He also earned the CFA designation.

3. Vice President and Financial Controller ("Controller") – As the most senior person in EPA's financial function, in effect the Controller operates as EPA's CFO.

   Prior to joining EPA, the Controller practiced as a CPA. He holds a bachelor's degree in accounting from Brigham Young University.

C. EPA's *for-profit* business enterprise and investment fund grew tax-free to more than *$100 billion.*

From EPA's founding in 1997 through the next 22 years, EPA's sole operating activity has been conducting a securities investment business. This business has grown larger and larger, such that EPA's investment business and investment fund is now larger than most commercial hedge funds, as it is has exceeded more than ***$100 billion***.

EPA's entire structure and operations have always focused on making money and accumulating funds. For example, by 2019 EPA employed a staff of approximately 75 fulltime individuals to manage investments, of which approximately 40 are professional investment managers who are assigned responsibility to maximize investment profits from specific portfolios.[21] EPA has competed very successfully with other large commercial investment firms and funds, using sophisticated investment strategies and exploiting "deal-making" opportunities available only to the largest investment firms, to amass its $100 billion fund.

Significantly, ***precisely because EPA has never paid income tax,*** it has benefitted from a ***distinct competitive advantage*** over other investment firms. As a result, EPA had additional funds to invest, and also managed to ***secure large, highly coveted and potentially lucrative investments in private equity***, which many taxpaying investment firms were unable to secure, due to their need to manage liquidity in order to pay tax.[22] Because EPA did not need cash from its investments to pay tax, private equity funds could rely upon EPA to leave their investments intact for the long term. This caused private equity funds to regard EPA as a preferred investor,

[21] A detailed description of EPA's investment business and $100 billion investment fund is provided in Attachment A to this Memorandum.

[22] The more prestigious and sought-after private equity funds limit the numbers of investors, creating a scarcity of opportunity for investment firms. These private equity funds are also highly discerning and selective, preferring firms that can make large investments and that will not make withdrawals in difficult market conditions. EPA's not paying tax has allowed it to make exceptionally large investments in private equity, and has allowed EPA to demonstrate, both in public statements and in practice over time, that it has not liquidated and will not liquidate these investments when market conditions turn.

with the result ***EPA competed unfairly—and highly successfully—with other large hedge funds for the most sought-after and potentially lucrative private equity deals***.[23]

These benefits have caused EPA to grow larger and to wield more market influence in the private equity market than many competing large money managers, including hedge funds.

D. EPA's only distributions over 22 years (through 2019) have been to benefit *"private interests"* and *profit-making* purposes, which preclude tax-exempt status.

This massive growth of EPA's investment fund was made possible in part ***precisely because EPA never used any of its funds for "religious, charitable . . . or educational purposes" from 1997 until at least November 2019.*** In that 22-year relevant period, EPA did not fund the Church's religious, charitable, or educational activities; the Church funded those activities itself with other Church resources. [24]

Removing any doubt that EPA is a for-profit securities investment business, EPA has made only two sets of distributions during the 22-year relevant period, and each was for profit-making, "private interests":

1. In 2009, EPA distributed approximately $600 million to benefit Beneficial Financial Group ("BFG"). BFG is one of the Church's for-profit entities,[25] and operates as an insurance and financial services company based in Salt Lake City, Utah. BFG is taxed as a C corporation.

[23] This advantage became apparent to Mr. Nielsen in a 2017 discussion with EPA's Head of Private Equity. Mr. Nielsen attended an internal EPA meeting in which it was reported that EPA's Private Equity "silo" had grown by more than $2 billion, roughly double that of previous years. After the meeting Mr. Nielsen asked EPA's Head of Private Equity how EPA had managed to achieve such success in gaining access to the top-tier private equity funds and in securing such prominent investment stakes with them.

EPA's Head of Private Equity informed Mr. Nielsen that these private equity firms, like Sequoia and others, had come to regard EPA as a preferred investor—and that as a result, they "want our money," largely because EPA demonstrated that EPA's investments were made with "100-year money." In effect, EPA had managed to show these firms that EPA could write large checks and readily participate in follow-on capital calls, and that EPA would not withdraw prematurely any financial commitments in these illiquid funds, even in market downturns. These factors allowed EPA to compete for, and win, allocations in the top-tier private equity funds, potentially to the prejudice of other investment firms that paid tax and as a result, did not have the same competitive advantages.

[24] EPA owns the vast majority of the assets it manages, except for a small amount of cash of the Church and Church affiliates, which comprises less than 8% of EPA's assets under management.

[25] BFG is a subsidiary of Deseret Management Corp. (DMC), a management and holding company and for-profit business owned by the Church. EPA "funneled" this $600 million through DMC, an arrangement which kept from public scrutiny (including the IRS) that EPA was making large distributions to "private interests" such as an insurance business. As discussed in Section IV below, EPA's providing hundreds of millions in funding to benefit a "private interest," by itself, disqualifies EPA from exempt status.

2. Between 2010 and 2014, EPA distributed $1.4 billion to Property Reserve Inc. ("PRI"), which is based in Salt Lake City, Utah, for development of a luxury shopping mall known as the City Creek Mall. PRI used the funds to upgrade this shopping mall.[26]

In short, over the 22 years of its existence, EPA has operated a for-profit securities investment business that (a) has used none of its $100 billion for any religious, charitable, or educational purpose, and (b) has made distributions only to ***for-profit*** activities that are "private" interests. Distributions totaling $2 billion for an insurance company and a shopping mall, by definition, are not for "charitable" purposes. As shown below, each of these facts defeats tax-exempt status for EPA, pursuant to Treasury Regulation § 1.501(c)(3)-1.

E. Mr. Nielsen learns that EPA has used none of its $100 billion for *"religious, charitable . . . or educational purposes"* in 22 years.

David Nielsen is an investment manager. Mr. Nielsen's family has a long history of Church membership and service dating back to the mid-1800s, and Mr. Nielsen is a lifelong member of the Church. He served as a missionary of the Church for two years in Brazil.

Mr. Nielsen graduated from Brigham Young University *summa cum laude*, where he earned a degree in Finance with an emphasis in Economics, and a minor in Chemistry. He then worked for a major hedge fund in New York City for five years. He left the hedge fund to pursue an MBA at UCLA. In 2010, EPA recruited Mr. Nielsen as an investment Portfolio Manager. All EPA managers and supporting staff are fully committed members of the Church. EPA regards membership of the Church in good standing and a "temple recommend" as prerequisites for employment.

Although Mr. Nielsen could have earned significantly more working for a traditional hedge fund, Mr. Nielsen accepted EPA's offer because he believed at that time that EPA actually supported the Church's religious and charitable activities.

Over the next nine years at EPA, Mr. Nielsen learned EPA's business. Mr. Nielsen realized that EPA's principals were operating EPA solely as a for-profit investment business, without applying any of its vast resources for charitable, educational, or religious purposes.

F. Evidence of *Systematic Accounting Fraud* and *Private Inurement at EPA*—Including Years of "Disappearance" of Assets from EPA's Books, EPA's Lack of Internal Controls for Senior Officials, the Manipulation of EPA's Books, and Resulting Unreliability of EPA's Records.

At EPA Mr. Nielsen also learned of years of ongoing ***fraudulent accounting*** and evidence of ***private inurement.*** Mr. Nielsen was informed that, ***for at least a decade***, EPA's senior management knowingly permitted the ***regular "disappearance" of significant assets from EPA's books***. Deleting assets manipulates an organization's books and records and makes them inaccurate. Since there is little conceivable reason other

[26] The City Creek Mall is another classic "private" interest that served no charitable purpose, but that received $1.4 billion in distributions/withdrawals by EPA. It matters not that EPA's distribution of $1.4 billion to this for-profit enterprise of a shopping mall apparently was made through another Church-affiliated corporation, Property Reserve, Inc., which was organized as a Utah non-profit corporation. The undisputed beneficiary of this distribution was the City Creek Mall, a commercial enterprise.

than private inurement for senior executives to permit deletion of EPA's assets from its books, this is strong evidence of private inurement, as discussed below.

1. EPA has been especially susceptible to financial malfeasance.

EPA has been readily susceptible to financial malfeasance for a number of reasons. In the relevant 22-year period, this firm with a $100 billion investment fund had never been audited by independent auditors, and had no audit committee. Moreover, EPA had no non-executive directors or any board to which EPA managers must report.[27] Although claiming to comply with applicable law, EPA avoided even having a compliance officer from 1997 until 2015. Even then, EPA continued to engage in the deceptive practices described here, with fraudulent accounting practices, false statements to the IRS, and fraudulent filings with the SEC.

This absence of structure meant that EPA's executive managers effectively have controlled tens of billions of dollars—without basic oversight. That lack of oversight would never be tolerated in any other business organization, and it permitted large assets simply to be deleted from EPA's books.

2. Assets have been frequently deleted from EPA's accounting system, for apparently at least a decade

During Mr. Nielsen's 2010-2019 tenure at EPA, he was stunned to learn that EPA frequently deleted significant assets from its accounting system, with the knowledge of senior management.

First, in 2011, Mr. Nielsen discovered that one of EPA's financial assets (an approximately $1 million cash receivable from a bank) did not appear in the EPA accounting system.[28] Mr. Nielsen questioned the EPA employee who deleted this asset—an employee who reported directly to EPA's Controller and was responsible for preparing EPA's internal financial reports. This EPA employee admitted that he ***frequently deleted assets from EPA's accounting system, with the knowledge of EPA's Controller***.

Any financial manager would know that the deletion of assets would be regarded as egregious and unacceptable by any professional standards. Yet EPA's Controller continued to allow EPA staff to make these deletions.

It's difficult to find a reason ***other than private inurement*** for EPA's senior managers to permit deletion of assets from EPA's books. Deleting assets from an accounting system can readily be used as ***a technique for fraud and private inurement***, especially where the asset is cash or can easily be converted to cash (such as a receivable). This practice amounts to a manipulation of the accounting system.

Manipulation of accounting records is often discussed as evidence of fraud, intended to conceal.[29] *See, e.g.,* United *States v. Gibson*, No. CV115CR10323IT1, 2017 WL 3271707, at *2 (D. Mass. Aug. 1, 2017)(alterations

[27] This absence of reporting structure for EPA's finances stands in strong contrast with the multiple tiers of reporting that govern EPA's investments.

[28] The IRM covering the audit of tax-exempt organizations requires analysis of "any disposition of assets for possible inurement to officials" (IRM 4.75.11.15.4 (01-18-2017), paragraph 3.F).

[29] "Fraudulent financial reporting may involve acts such as … [M]anipulation, falsification, or alteration of accounting records" (AICPA SAS No. 82).

of accounting records charged as overt acts in furtherance of conspiracy as part of a "tax-fraud" scheme). *See also In re Wyly*, 552 B.R. 338, 394 (Bankr. N.D. Tex. 2016) ("inadequate maintenance of records" and "filing false returns" are other badges of fraud).

Past criminal prosecutions illustrate how the manipulation of an accounting system can be used to ***facilitate and cover up that insiders were personally profiting from that accounting manipulation.*** For example, in *United States v. Simmerman*, 850 F.3d 829 (6th Cir. 2017), the manager of a credit union who embezzled funds over a 16-year period had also manipulated the credit union's accounting system over this period to conceal that the embezzled funds were missing. Through her repeated manipulation of the accounting system, she reduced the cash figure reflected by the system – thereby allowing her to conceal that cash was being stolen. The Court of Appeals affirmed the trial court's finding that: "*concealment* of her offense" was "via the extensive manipulation of Shoreline's computer systems and financial records." *Id.* at 83. In similar vein, EPA's repeated manipulation of EPA's computer systems and financial records—by deleting assets—reduced the cash figure reflected by the system. This practice would similarly conceal any theft of these assets, or of corresponding amounts of cash.

When Mr. Nielsen learned in 2011 of the disappearance of assets from EPA's books, Mr. Nielsen raised the issue with EPA's then-President and its Controller. They portrayed the $1 million missing cash receivable as a one-time issue, which had not likely to have occurred previously, and was unlikely to occur again. (These statements would turn out to be deceptive, based on Mr. Nielsen's later learning from a reliable EPA source that EPA had been regularly deleting assets for at least five years before 2011.)

EPA's Controller informed Mr. Nielsen that a change was being introduced to EPA's accounting system, to ensure that the problem would not recur. Both EPA's then-President and EPA's Controller also informed Mr. Nielsen that there would be a separation of duties in the future, to safeguard against potential fraud or theft.

3. After Mr. Nielsen made EPA management aware of the problem, EPA management deceptively continued to permit the deletion of assets.

Contrary to EPA officials' statements in 2011 that the deletion of assets was a one-time occurrence, in 2016 Mr. Nielsen learned from an EPA Financial Analyst that the disappearance of assets ***was still occurring on a regular basis,*** even with the new accounting system that EPA had acquired, and in fact had been occurring for ***at least a decade***. Mr. Nielsen again sounded the alarm with senior EPA management, and he asked whether this fact had been disclosed in any financial statements of EPA. EPA management responded essentially, "That's not how this works here."

This time EPA's then-President and its Controller committed to deal with the issue by way of an "audit." However, rather than commission an independent audit, instead they oversaw a self-serving internal review, described below:

4. EPA engaged in a sham "audit," which is further evidence of systematic accounting fraud and private inurement.

The "audit" undertaken by EPA was one in which EPA management essentially audited the activities that they themselves oversaw. To illustrate:

- The auditors selected by EPA's President and Controller were employees of an entity affiliated to EPA, rather than an independent firm of professional CPAs.

- Furthermore, these auditors had a pre-existing friendly relationship with EPA's Controller, as they had previously worked together in the same department.

- The "auditors" reported directly back to EPA's President and Controller.

- With the absence of any third-party involvement in the process, EPA's President and Controller mandated the review themselves, including the scope and approach of the review. EPA's President and Controller avoided having an audit committee or another independent body to mandate the review.

- EPA's Controller became actively involved in supervising the auditors' review. Clearly, neither EPA's President nor its Controller should have participated in the review, let alone supervised it, because they had supervised the very activities being reviewed.

- At the end of the review, the auditors reported back to EPA's President and Controller[30] with the results of their review, rather than report back to an audit committee or another independent body, based on EPA officials' statements to Mr. Nielsen.

At the conclusion in 2017, EPA's CIO stated to EPA personnel that the auditors had found nothing wrong, and that "everything was fine." No EPA official gave an explanation or justification for the repeated deletion of assets from EPA's books, or how the deletion of assets could be "fine."

After the meeting, Mr. Nielsen asked the CIO how he could make the statement that "everything was fine." At best, the auditors could only have reported that they had not been able to discover malfeasance—rather than reporting that no malfeasance existed—given that records had been deleted. The CIO did not respond to this question; instead, he told Mr. Nielsen to "drop it."

In short, after at least a decade of EPA's deletion of substantial assets from EPA's books, this sham "audit" is further evidence of ***intentionally fraudulent accounting overseen by the leadership at EPA***.

5. EPA lacked internal controls over cash.

Notwithstanding that EPA has for decades managed billions of dollars of cash, remarkably EPA has never had meaningful internal controls over the cash that it managed during the 22-year relevant period.

Given that EPA is not publicly listed, EPA was not obligated to follow the Sarbanes-Oxley rules on internal controls.[31] However, given EPA's size and sophistication, it could be expected that EPA would follow these rules on the basis that they constitute "best practices," just as many unlisted companies willingly do even

[30] EPA's CIO may have been included in this communication.

[31] The Sarbanes-Oxley Act of 2002. Section 302 of that Act requires the CEO and CFO of a publicly listed company to certify, *inter alia*, that they have identified and disclosed "all significant deficiencies in the design or operation of internal controls."

though they are a fraction of the size and sophistication of EPA.[32] In fact, many firms hold the view that all companies should follow these Sarbanes-Oxley principles.[33]

However, instead of following these most fundamental control rules, EPA in fact did the opposite – it ***failed to institute even the most basic internal controls for managing its billions in cash.***[34] To illustrate, a major accounting firm lists certain internal controls for private companies.[35] Of these internal controls listed, EPA has

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[32] *See* https://www.workiva.com/sites/workiva/files/pdfs/thought-leadership/sox-state-of-market-report-2020.pdf.

[33] *See* https://www.bakertilly.com/insights/why-all-companies-should-embrace-certain-sox-principles.

[34] EPA's absence of financial controls is noteworthy not only because of the large amount of cash and other assets involved, but also because this stands in strong contrast to the overall culture of the organization, as can be seen from the rigorous standards EPA sets for the activities and behavior of its employees. For example, EPA expected employees to follow a written Code of Conduct, with a view to ensuring their conduct was consistent with "the highest standards of professionalism, integrity, avoidance of conflicts of interest, ethical conduct and compliance with laws." The Code of Conduct governs a large number of matters in detail, including personal investments, insider trading, and outside activities. The Code of Conduct also includes detailed procedures governing compliance, and specific controls over record maintenance. This stands in stark contrast to the lack of procedures and controls over EPA's cash and the manipulation of EPA's accounting system that management allowed.

EPA also appointed a Compliance Committee to actively oversee compliance with the Code of Conduct, and EPA employees were required to certify, on an annual basis, that they had complied with the requirements of the Code of Conduct. Given EPA's strong emphasis on compliance and controls generally for lower-level employees, EPA's lack of accounting system compliance and controls for senior managers is completely out of line with the culture of compliance.

[35] https://www2.deloitte.com/us/en/pages/audit/articles/effective-internal-controls-guide.html. The internal controls listed are: Segregation of duties; Authorization controls; Reconciliation controls; Physical inventory counts (if applicable); Periodic review of organizational performance, such as analysis of budget to actual; and IT general controls, including system access security, change management, and network operation. The controls that apply to EPA, but that EPA failed to institute, are listed below.

- **Segregation of duties**.

  The fact that the EPA employee who first informed Mr. Nielsen of the deletion of assets was in charge of the general ledger (including the reconciliation of EPA's cash), and that he also had access to EPA's bank accounts, is in disregard of segregation of duties.

- **Authorization controls.**

  Clearly, EPA made no attempt to institute authorization controls over cash. When EPA's Controller permitted his staff to delete assets routinely and without seeking authorization, EPA management created a fertile environment for private inurement.

- **Reconciliation controls.**

  It's clear that EPA failed to institute reconciliation controls of cash assets. Its "reconciliation" of cash assets took the form of "force-balancing"—***by deleting assets from the system***. Rather than identifying

failed to institute four in the context of EPA's cash management, and of the two remaining controls, one doesn't apply to EPA.[36]

6. EPA's cash figures don't generally reconcile.

In the relevant period, EPA operated two systems that accounted for cash, one focusing on investments, and the other focusing on expenses and administration. Both systems were meant to account for cash on a firm-wide basis. One could expect that the cash figures reflected by both systems would match, and that if, for some reason, there was a discrepancy between the cash figures reported under the two systems, that a reconciliation would be prepared to explain the difference.

However, in reality, the cash figures reported by these systems seldom if ever matched; furthermore, no reconciliations were undertaken to account for the discrepancies between these figures, which generally were in the tens of millions of dollars. Instead, assets were simply deleted from the accounting system which showed the larger cash figure - to ***make it appear*** that the cash figures matched. As a result, rather than reflecting reality, the cash figures shown by these systems are whatever EPA management desired that they should be.

7. Conclusion: Strong evidence of accounting fraud and private inurement.

EPA's years of deletion of assets and manipulation of accounting entries is a badge of fraud, and thus is strong evidence of private inurement. It is difficult to conceive of a reason for deleting assets other than private inurement, as the cases linking manipulation of accounting records with fraud illustrate. EPA's manipulation of

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and determining the reason for discrepancies, instead EPA did the opposite—it ***concealed*** the discrepancies by deleting assets.

- **IT general controls, including system access security.**

  The EPA employee whose job responsibility was to prepare EPA's internal financial reports also had access to EPA's accounting systems—***access that allowed him to delete assets***. This practice disregards the most basic fundamental of financial control.

  Granting this employee this access to EPA's accounting systems fell under the purview of EPA's Controller.

[36] The internal controls listed are not significantly different from those listed by other firms dealing with internal controls. For example, CPA Practice Advisor provides a checklist of seven internal controls for cash management to protect against "internal employee theft and external theft": https://www.cpapracticeadvisor.com/accounting-audit/article/12294853/cash-management-internal-controls-checklist. EPA has failed to institute at least 4 of these 7 internal controls, namely: Segregation of duties; Control access to accounting systems and cash; Discourage management override of controls; and Reconcile bank accounts.

its books makes EPA's accounting records unreliable. [37] As discussed in the legal analysis in Section V below, with unreliable records caused by its manipulation of its accounting records, EPA cannot carry its burden of proving, through reliable records, that no private inurement has occurred. Moreover, any amount of private inurement means EPA is not tax-exempt, as discussed in Section V below.

G. After Mr. Nielsen tries and fails to cause EPA's officials to comply with the law, Mr. Nielsen resigns in 2019.

By 2019, EPA still failed to engage in charitable or religious activities, failed to correct its lack of internal controls, and failed to stop the regular deletion of assets from EPA's books. As a result, Mr. Nielsen decided that he could not be part of such an organization. He resigned on August 29, 2019 and made his *pro se* submission to the IRS in November 2019.

H. The *Klein* conspiracy: as acts in furtherance, EPA made *more than 260 fraudulent SEC filings* in the names of other entities—rather than in its own name—to conceal its vast securities investment business.

With the assistance of others outside EPA, EPA has engaged in a *Klein* conspiracy to defraud the IRS and evade paying tax by pretending to be a tax-exempt organization. In furtherance of the *Klein* conspiracy, EPA has made many efforts to conceal its large and growing securities investment business, from its 1997 formation through at least 2019.

In one such remarkable effort revealed to Mr. Nielsen in May 2018, EPA's CIO made two sets of admissions that unmistakably evidence a *Klein* conspiracy to defraud the IRS, as well as EPA's acknowledgement that it risked losing its tax-exempt status if the truth were known:

1. The CIO, in a May 2018 meeting with Mr. Nielsen and other EPA portfolio managers about approximately ***$32 billion in EPA's exchange-traded investments***, explained that EPA was making certain related SEC filings ***not in EPA's own name as was required***, but in the names of various LLCs that EPA controlled. The CIO acknowledged to the group that EPA would continue filing in these other entities' names because EPA was ***seeking to avoid "attention" that would be "potentially damaging" to EPA***.

2. Just after the meeting, Mr. Nielsen privately asked the CIO what he meant by "potentially damaging" to EPA. The CIO replied that disclosing this approximately $32 billion in EPA investments would ***"risk the firm"*** because EPA might ***"lose its tax-exempt status."***

The CIO's admissions about EPA's intent in making required SEC filings in other entities' names are most revealing. Although acts in furtherance of a conspiracy to defraud the IRS need not be criminal acts

[37] EPA clearly constitutes a high "control risk" from the IRS perspective. The IRM lists the internal controls to be evaluated in auditing an exempt organization, including factors such as whether the organization reconciles the bank statements to the books, segregation of duties, active board of directors, outside third parties such as a government agency overseeing the organization, and annual independent audit. (IRM 4.75.11.5.1 (01-18-2017)). ***EPA constitutes a high "control risk" for all these reasons.***

themselves, it is a felony to ***willfully*** make false or misleading statements as to any material fact in a filing required under the securities laws. *See, e.g.,* 15 U.S.C. § 78ff(a).[38]

A summary of EPA's fraudulent SEC filings follows here:

1. EPA was required to make disclosures on SEC Form 13F each quarter since 1997.

To explain the context of EPA's fraudulent SEC filings, section 13(f) of the Securities Exchange Act of 1934 requires an institutional investment manager with at least $100 million in assets under management (such as EPA has been since it was formed in 1997) to file SEC Form 13F every quarter.[39] This requirement extends to an entity that invests in securities for its own account, and where it exercises investment discretion over certain securities valued at $100 million or more (as EPA has done since its 1997 inception).[40]

Thus, starting in 1997, EPA was required to file with the SEC Form 13F ***in its own name*** each quarter, because EPA was the entity that exercised "investment discretion."[41] The legal duty to file "creates the duty to file truthfully and accurately," and criminal liability can result when a party knowingly fails to do so. *See, e.g.*, *United States v. Bilzerian*, 926 F.2d 1285, 1297–98 (2d Cir. 1991).

2. EPA initially gives false explanations to its portfolio managers about its use of LLCs.

During Mr. Nielsen's approximately nine years there, EPA gave false explanations to its portfolio managers for EPA's actions to conceal its investment business, and concealed that it was making fraudulent filings of Form 13F.

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[38] 15 U.S.C. § 78ff

> (a) Willful violations; false and misleading statements
>
> Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who **willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder** or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which **statement was false or misleading with respect to any material fact**, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation. (Emphasis supplied).

15 U.S.C. § 78ff (emphasis supplied). *See also* 15 U.S.C. § 77t.

[39] 15 U.S.C.A. § 78m(f). *See also* 17 C.F.R. § 240.13f-1 ("Reporting by institutional investment managers of information with respect to accounts over which they exercise investment discretion.")

[40] *Id.*

[41] *Id. See also* 15 U.S.C.A. § 78c(a)(35) ("investment discretion" defined).

Before 2018, Mr. Nielsen had asked EPA senior officials why EPA was using LLCs in connection with its Public Equity portfolios. They responded that LLCs were used for trade execution, to make it difficult for EPA's trading strategies to be revealed. EPA management also told Mr. Nielsen that all mandatory filings had been made and that, because of EPA's religious exemptions, the firm did not have to disclose its Public Equity portfolio. Mr. Nielsen believed that explanation until 2018, and thus was unaware EPA was making fraudulent filings of Form 13F in the names of various LLCs.

3. At an emergency meeting in May 2018, EPA's CIO admits EPA's deception to Mr. Nielsen and other portfolio managers.

In May 2018, EPA's CIO called an emergency meeting after a website "Mormonleaks" reported that it had "uncovered 13 LLCs that appear to have ties to the Mormon Church." [42] Although the report did not mention Ensign Peak or reveal that EPA was making SEC filings in the names of these LLCs, the report nonetheless created quite a stir at EPA. At that time, Mr. Nielsen still believed EPA officials' false statements that EPA had satisfied all filing requirements and did not have to disclose anything relating to these LLCs or its portfolio.

At this emergency meeting of more than 20 EPA employees, Mr. Nielsen asked the CIO if EPA planned on creating new LLCs and beginning anew the process of hiding these asset values, or if EPA should begin reporting these asset values in its own name. The CIO responded that reporting in EPA's own name would likely bring "***more attention"*** to this issue, which could be "***potentially damaging***."

After the meeting, Mr. Nielsen asked the CIO privately what he meant by "potentially damaging." The CIO replied that it would "***risk the firm***." Mr. Nielsen then asked what the CIO thought was the biggest risk EPA was facing. The CIO responded that the biggest risk he saw was that ***EPA "might lose its tax-exempt status***."

This statement by the CIO of EPA caught Mr. Nielsen off guard. ***How could EPA be at risk of losing its tax-exempt status unless the facts warranted a revocation of that status?*** Mr. Nielsen was troubled greatly by the CIO's admission, which suggested that EPA's filings of Schedule 13F in the names of these LLCs were intended to deceive, and to avoid exposing that EPA was in reality a massive securities investment business—not a tax-exempt entity.

Briefly summarized here, from 2007 through 2019, EPA made more than 260 filings of Form 13F not in its own name as required, but in the names of 12 LLCs it controlled. Thus, rather than disclose itself in these filings, EPA "hid behind" these various LLCs for ***more than ten years of these filings***, which misrepresented and concealed EPA's activities in operating its vast securities investment business. Concealing EPA's huge securities business was an essential part of its effort to evade tax. Attachment B provides a detailed discussion of these 260+ fraudulent SEC filings, and EPA's failure to file any Form 13F before 2007.

In sum, the clearest evidence of EPA's intent was precisely what the CIO of EPA admitted there: that filing Form 13F in EPA's name and thus disclosing that EPA held these more than $30 billion in investments would likely bring "***more attention***" to EPA, which could be "***potentially damaging"—and might even "risk the firm" (EPA) because EPA might "lose its tax-exempt status" if the truth were known.***

[42] *See* https://mormonleaks.io/wiki/index.php?title=Investment_Portfolios_Connected_to_the_Mormon_Church.

4. Once EPA has an opportunity to review Mr. Nielsen's *pro se* IRS submission in December 2019, EPA abruptly begins filing Form 13F in its own name.

Tellingly, ***after*** this May 2018 meeting with EPA's portfolio managers, EPA continued its fraudulent filings of Form 13F in the names of other entities ***for more than eighteen months—but then abruptly stopped when it had an opportunity to review Mr. Nielsen's pro se IRS submission when it appeared on the internet in December 2019.***

In December 2019, EPA had access to Mr. Nielsen's pro se IRS submission that addressed these LLCs.[43] EPA knew Mr. Nielsen has personal knowledge that EPA was the actual manager that exercised investment discretion over the securities listed on the past 13F filings. With EPA facing public scrutiny, EPA suddenly began making Form 13F filings in its own name, and stopped hiding behind these 12 LLCs. See Exhibit 3 (compilation/examples of SEC filings of Form 13F). EPA's more recent Form 13F filings in its own name starting in 2020 are admissions that EPA was required to do so in prior years as well, rather than fraudulently file in other entities' names. See Exhibit 8.

Although acts in furtherance of a *Klein* conspiracy ***need not be unlawful by themselves***, here EPA's 260+ fraudulent filings ***were in fact unlawful acts*** in violation of its legal duty to file Form 13F in its own name.[44] Willful falsity about a material fact in a required SEC filing is a criminal act, because the legal duty to file "creates the duty to file truthfully and accurately." *See, e.g.*, *United States v. Bilzerian*, 926 F.2d 1285, 1297–98 (2d Cir. 1991)(affirming convictions for offenses including conspiracy to defraud the IRS and making false statements, for willfully failing to disclose information in SEC filings required under section 13(d)). By analogy, EPA and those acting knowingly and corruptly to assist it unquestionably engaged in a *Klein* conspiracy through these overt acts of fraudulent SEC filings of Form 13F.

As discussed in the next section, as part of the same *Klein* conspiracy to defraud the IRS that motivated EPA to make these fraudulent SEC filings, EPA also made regular false statements to the IRS from at least 1997 through 2019:

I. As additional acts in furtherance of a *Klein* conspiracy, EPA made more than 20 years of material false statements to the IRS and other non-disclosures, to conceal EPA's vast business enterprise.

As additional acts to further the *Klein* conspiracy, for more than two decades from at least 1997-2019, EPA has made material false statements to the IRS in annual filings.

Misrepresenting itself as a tax-exempt organization, each year since at least 2007 EPA has filed Form 990-T with the IRS, signed under penalty of perjury. Among other things, the Form 990-Ts that EPA filed require disclosure of (a) the "total of the end-of-year assets from the organization's books of account" and (b) the existence of any foreign accounts.

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[43] *See pro se* IRS submission at 23-25.

[44] While the SEC's interest by definition is in violations of the securities laws, Mr. Nielsen's discussion here has focused on how the more than 260 fraudulent SEC filings are strong evidence of a *Klein* conspiracy to defraud the IRS and evade tax by accomplishing exactly what the CIO of EPA described—to perpetuate EPA's claimed tax-exempt status, which was threatened if the facts about EPA's massive securities investment business were disclosed.

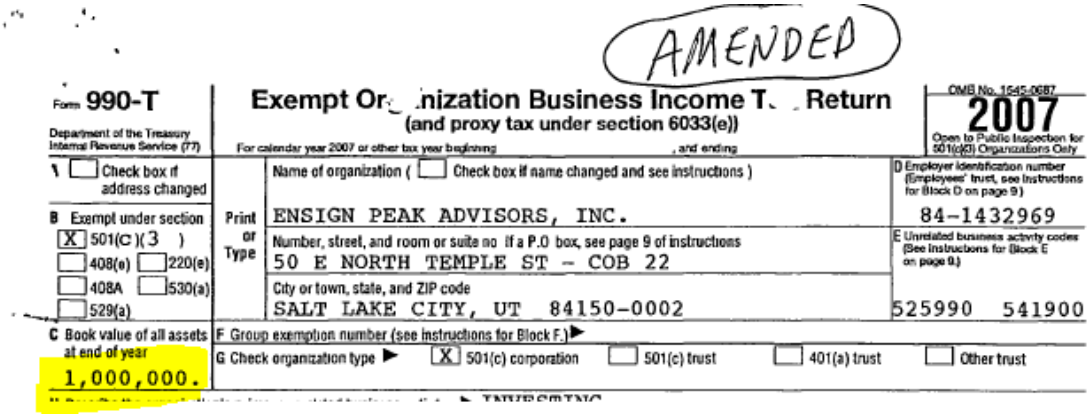
In order to conceal EPA's vast for-profit securities investment business, EPA has willfully made materially false statements in EPA's Form 990-T filings with the IRS each year at least since 2007. At all relevant times, EPA and the executives signing these forms had detailed knowledge of the facts that show these statements were false.

1. **EPA repeatedly made material false statements regarding the value of EPA's assets in IRS filings, which is further evidence of a *Klein* conspiracy.**

EPA, through filings bearing the names of its former President and Controller, made willful false statements on EPA's Form 990-T filings from at least 2007–2018, in material ways intended to mislead the IRS.

Among other things, Form 990-T's Instructions state that the filer must"[e]nter the total of the end-of-year assets from the organization's books of account." In 2007, the book value of EPA's assets was conservatively in the ***tens of billions of dollars***. Nothing in the law authorized EPA to falsely state any amount other than the actual amount.

In response to this question, EPA concealed its billions in assets by responding falsely. In EPA's Form 990-T for 2007 (and thereafter), EPA ***concealed more than 99.9% of the value of its billions in assets*** by stating that the value was only "$1,000,000." The relevant excerpt is as follows:



AMENDED

Form 990-T — Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) — 2007

Department of the Treasury, Internal Revenue Service (77)

For calendar year 2007 or other tax year beginning , and ending

OMB No. 1545-0687

Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section: ☒ 501(c)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

Print or Type

Name of organization (☐ Check box if name changed and see instructions): ENSIGN PEAK ADVISORS, INC.

D Employer identification number (Employees' trust, see instructions for Block D on page 9): 84-1432969

Number, street, and room or suite no. If a P.O. box, see page 9 of instructions: 50 E NORTH TEMPLE ST - COB 22

E Unrelated business activity codes (See instructions for Block E on page 9.)

City or town, state, and ZIP code: SALT LAKE CITY, UT 84150-0002

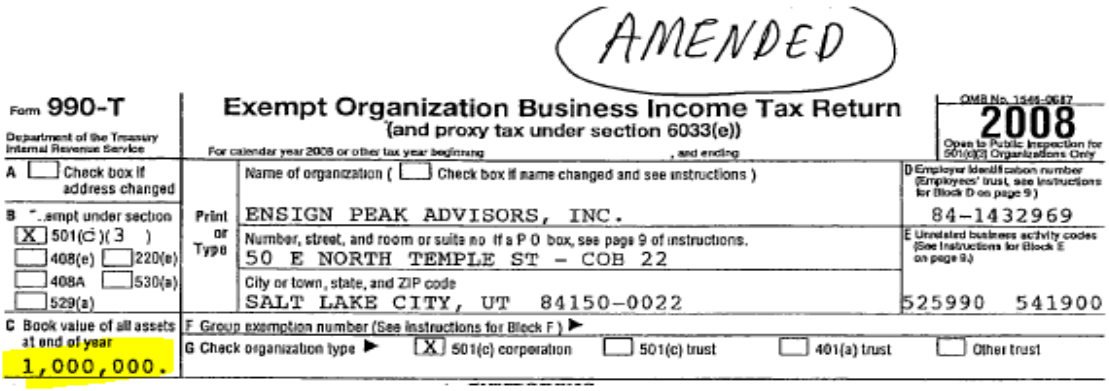
525990 541900

C Book value of all assets at end of year: 1,000,000.

F Group exemption number (see instructions for Block F.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

In the 2008 Form 990-T, EPA ***repeated this false statement*** and again misrepresented that the book value of its assets was only "$1,000,000":



AMENDED

Form 990-T — Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) — 2008

Department of the Treasury, Internal Revenue Service

For calendar year 2008 or other tax year beginning , and ending

A ☐ Check box if address changed

B Exempt under section ☒ 501(C)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

Print or Type

Name of organization (☐ Check box if name changed and see instructions): ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see page 9 of instructions.: 50 E NORTH TEMPLE ST - COB 22

City or town, state, and ZIP code: SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions for Block D on page 9.): 84-1432969

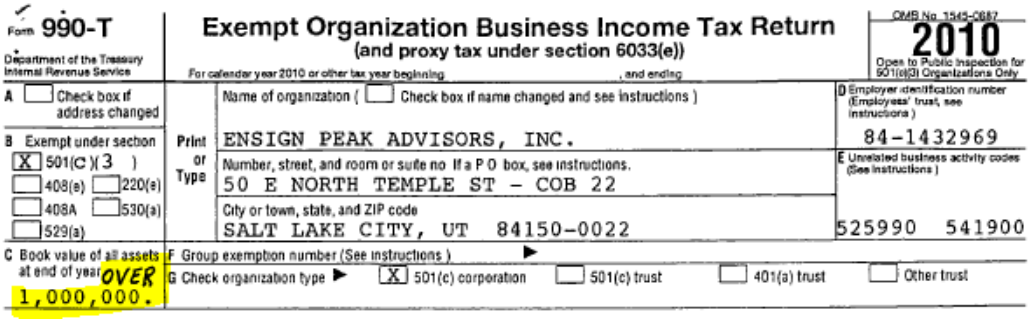
E Unrelated business activity codes (See instructions for Block E on page 9.): 525990 541900

C Book value of all assets at end of year: 1,000,000.

F Group exemption number (See instructions for Block F.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

Important to understanding EPA's pattern of deception, this false representation by EPA established a ***dishonest "baseline" figure of $1,000,000***. EPA used that false baseline as the foundation for later deceptive annual 990-T filings that also failed to disclose the value of its assets. EPA's later annual filings from 2010 - 2018[45] either failed to disclose a figure at all (in 2017)—in violation of its obligations to do so—or deceptively represented the book value either as "$1,000,000" or "OVER $1,000,000"[46] in each other Form 990-T filing from 2010 through 2018. See Exhibit 2 (compilation of Form 990-Ts submitted by EPA to IRS, excerpted here):



Form 990-T — Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) — 2010

Department of the Treasury, Internal Revenue Service

For calendar year 2010 or other tax year beginning , and ending

A ☐ Check box if address changed

B Exempt under section ☒ 501(C)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

Print or Type

Name of organization (☐ Check box if name changed and see instructions): ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.: 50 E NORTH TEMPLE ST - COB 22

City or town, state, and ZIP code: SALT LAKE CITY, UT 84150-0022

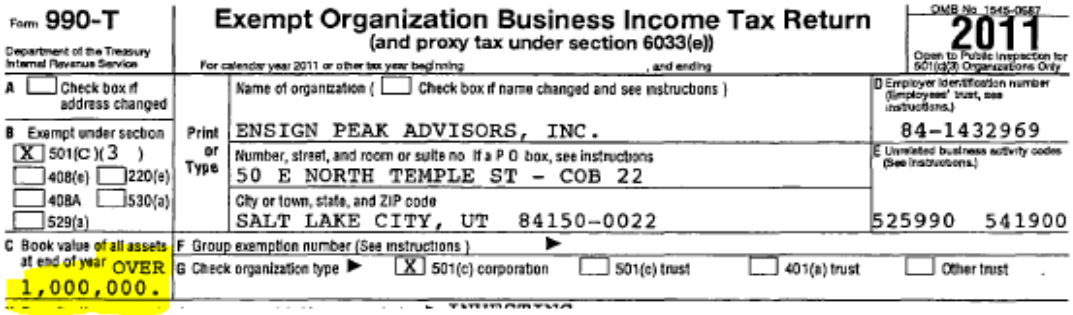
D Employer identification number (Employees' trust, see instructions.): 84-1432969

E Unrelated business activity codes (See instructions.): 525990 541900

C Book value of all assets at end of year: OVER 1,000,000.

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust



Form 990-T — Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e)) — 2011

Department of the Treasury, Internal Revenue Service

For calendar year 2011 or other tax year beginning , and ending

A ☐ Check box if address changed

B Exempt under section ☒ 501(C)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

Print or Type

Name of organization (☐ Check box if name changed and see instructions): ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.: 50 E NORTH TEMPLE ST - COB 22

City or town, state, and ZIP code: SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions.): 84-1432969

E Unrelated business activity codes (See instructions.): 525990 541900

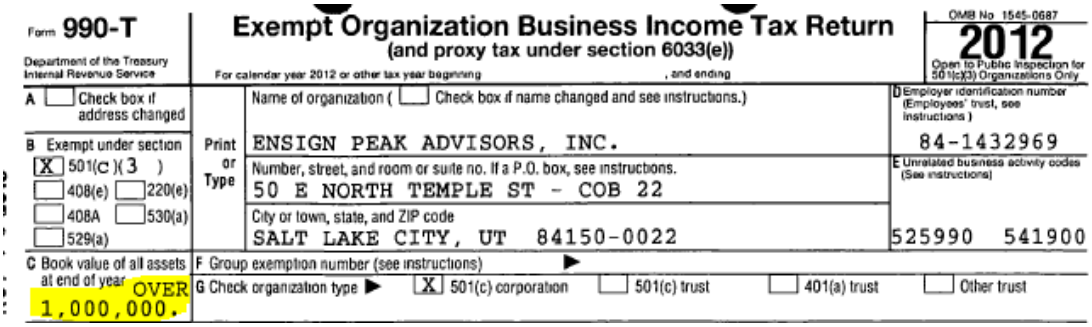
C Book value of all assets at end of year: OVER 1,000,000.

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

[45] Mr. Nielsen does not have a copy of any Form 990-T for 2009 or 2016 filed by EPA, as they were not available on the IRS website or Pro Publica's site (https://projects.propublica.org/nonprofits/advanced_searchpropublica.org), the sources of the Form 990-Ts discussed herein).

[46] In some cases, EPA's Form 990-T was signed with "OVER" written in handwriting.



Form 990-T
Department of the Treasury
Internal Revenue Service

Exempt Organization Business Income Tax Return
(and proxy tax under section 6033(e))

For calendar year 2012 or other tax year beginning , and ending

OMB No. 1545-0687
2012
Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section
☒ 501(c)(3)
☐ 408(e) ☐ 220(e)
☐ 408A ☐ 530(a)
☐ 529(a)

C Book value of all assets at end of year OVER 1,000,000.

Print or Type

Name of organization (☐ Check box if name changed and see instructions.)
ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.
50 E NORTH TEMPLE ST - COB 22

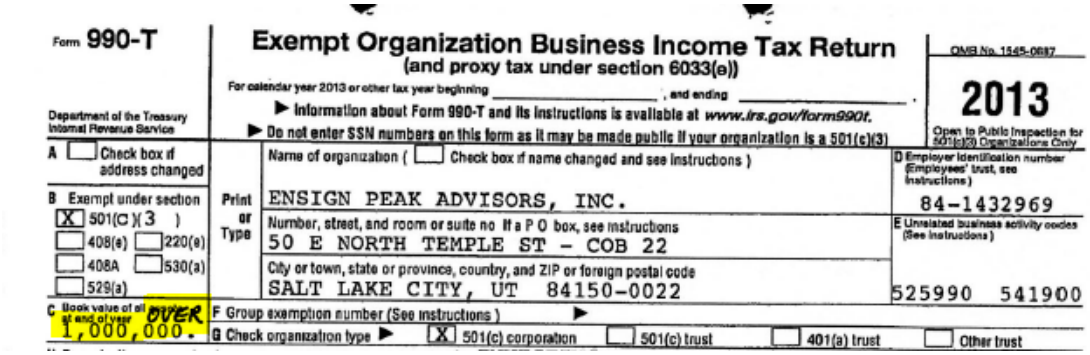
City or town, state, and ZIP code
SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions.)
84-1432969

E Unrelated business activity codes (See instructions)
525990 541900

F Group exemption number (see instructions) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust



Form 990-T
Department of the Treasury
Internal Revenue Service

Exempt Organization Business Income Tax Return
(and proxy tax under section 6033(e))

For calendar year 2013 or other tax year beginning , and ending

▶ Information about Form 990-T and its instructions is available at www.irs.gov/form990t.
▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0687
2013
Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section
☒ 501(c)(3)
☐ 408(e) ☐ 220(e)
☐ 408A ☐ 530(a)
☐ 529(a)

C Book value of all assets at end of year OVER 1,000,000.

Print or Type

Name of organization (☐ Check box if name changed and see instructions.)
ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.
50 E NORTH TEMPLE ST - COB 22

City or town, state or province, country, and ZIP or foreign postal code
SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions.)
84-1432969

E Unrelated business activity codes (See instructions.)
525990 541900

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

Form 990-T
Department of the Treasury
Internal Revenue Service

Exempt Organization Business Income Tax Return
(and proxy tax under section 6033(e))

For calendar year 2014 or other tax year beginning , and ending

▶ Information about Form 990-T and its instructions is available at www.irs.gov/form990t.
▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0687
2014
Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section
☒ 501(c)(3)
☐ 408(e) ☐ 220(e)
☐ 408A ☐ 530(a)
☐ 529(a)

C Book value of all assets at end of year OVER 1,000,000.

Print or Type

Name of organization (☐ Check box if name changed and see instructions.)
ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.
50 E NORTH TEMPLE ST - COB 22

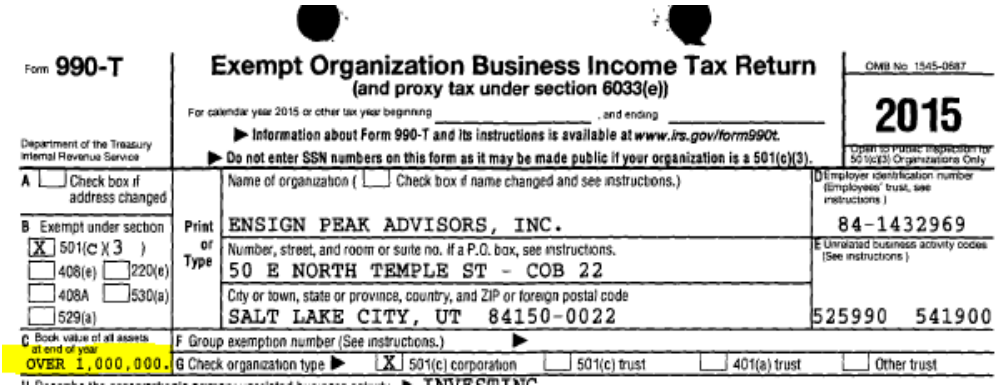
City or town, state or province, country, and ZIP or foreign postal code
SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions.)
84-1432969

E Unrelated business activity codes (See instructions.)
525990 541900

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust



Form 990-T
Department of the Treasury
Internal Revenue Service

Exempt Organization Business Income Tax Return
(and proxy tax under section 6033(e))

For calendar year 2015 or other tax year beginning , and ending

▶ Information about Form 990-T and its instructions is available at www.irs.gov/form990t.
▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0687
2015
Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section
☒ 501(c)(3)
☐ 408(e) ☐ 220(e)
☐ 408A ☐ 530(a)
☐ 529(a)

C Book value of all assets at end of year OVER 1,000,000.

Print or Type

Name of organization (☐ Check box if name changed and see instructions.)
ENSIGN PEAK ADVISORS, INC.

Number, street, and room or suite no. If a P.O. box, see instructions.
50 E NORTH TEMPLE ST - COB 22

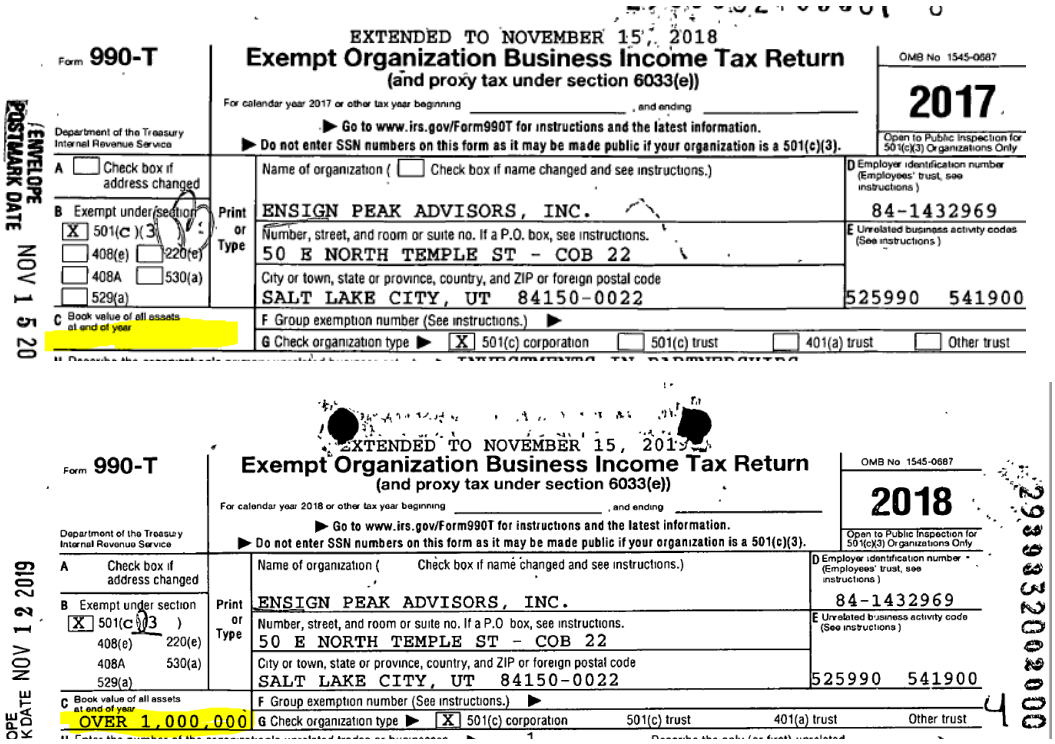
City or town, state or province, country, and ZIP or foreign postal code
SALT LAKE CITY, UT 84150-0022

D Employer identification number (Employees' trust, see instructions.)
84-1432969

E Unrelated business activity codes (See instructions.)
525990 541900

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust



EXTENDED TO NOVEMBER 15, 2018

Form **990-T** — **Exempt Organization Business Income Tax Return** (and proxy tax under section 6033(e))

OMB No 1545-0687 — **2017**

For calendar year 2017 or other tax year beginning _____, and ending _____

▶ Go to www.irs.gov/Form990T for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Department of the Treasury, Internal Revenue Service — Open to Public Inspection for 501(c)(3) Organizations Only

(ENVELOPE) POSTMARK DATE NOV 19 20

A ☐ Check box if address changed

B Exempt under section: ☒ 501(c)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

C Book value of all assets at end of year

Print or Type

Name of organization (☐ Check box if name changed and see instructions.): ENSIGN PEAK ADVISORS, INC.

D Employer identification number (Employees' trust, see instructions.): 84-1432969

Number, street, and room or suite no. If a P.O. box, see instructions.: 50 E NORTH TEMPLE ST - COB 22

E Unrelated business activity codes (See instructions.): 525990 541900

City or town, state or province, country, and ZIP or foreign postal code: SALT LAKE CITY, UT 84150-0022

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

EXTENDED TO NOVEMBER 15, 2019

Form **990-T** — **Exempt Organization Business Income Tax Return** (and proxy tax under section 6033(e))

OMB No 1545-0687 — **2018**

For calendar year 2018 or other tax year beginning _____, and ending _____

▶ Go to www.irs.gov/Form990T for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Department of the Treasury, Internal Revenue Service — Open to Public Inspection for 501(c)(3) Organizations Only

NOV 12 2019

A Check box if address changed

B Exempt under section: ☒ 501(c)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

C Book value of all assets at end of year: OVER 1,000,000

Print or Type

Name of organization (Check box if name changed and see instructions.): ENSIGN PEAK ADVISORS, INC.

D Employer identification number (Employees' trust, see instructions.): 84-1432969

Number, street, and room or suite no. If a P.O. box, see instructions.: 50 E NORTH TEMPLE ST - COB 22

E Unrelated business activity code (See instructions.): 525990 541900

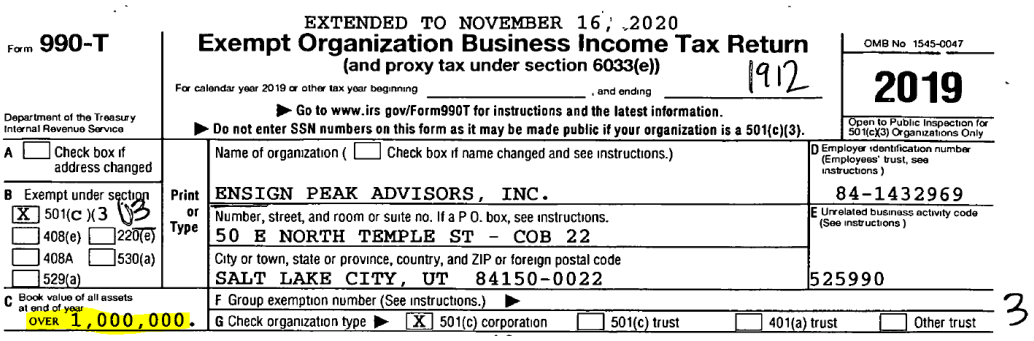
City or town, state or province, country, and ZIP or foreign postal code: SALT LAKE CITY, UT 84150-0022

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

4

More recently, EPA's Form 990-T filing for 2019 became available online. Apparently ***trying harder to avoid detection*** in its 2019 Form 990-T filing, EPA and/or its return preparer for 2019 used a ***smaller font*** for the word "OVER" in the misleading language added to Form 990-T, to continue this deceptive answer:



EXTENDED TO NOVEMBER 16, 2020

Form **990-T** — **Exempt Organization Business Income Tax Return** (and proxy tax under section 6033(e))

OMB No 1545-0047 — **2019**

For calendar year 2019 or other tax year beginning _____, and ending 1912

▶ Go to www.irs.gov/Form990T for instructions and the latest information.

▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Department of the Treasury, Internal Revenue Service — Open to Public Inspection for 501(c)(3) Organizations Only

A ☐ Check box if address changed

B Exempt under section: ☒ 501(c)(3) ☐ 408(e) ☐ 220(e) ☐ 408A ☐ 530(a) ☐ 529(a)

C Book value of all assets at end of year: OVER 1,000,000.

Print or Type

Name of organization (☐ Check box if name changed and see instructions.): ENSIGN PEAK ADVISORS, INC.

D Employer identification number (Employees' trust, see instructions.): 84-1432969

Number, street, and room or suite no. If a P.O. box, see instructions.: 50 E NORTH TEMPLE ST - COB 22

E Unrelated business activity code (See instructions.): 525990

City or town, state or province, country, and ZIP or foreign postal code: SALT LAKE CITY, UT 84150-0022

F Group exemption number (See instructions.) ▶

G Check organization type ▶ ☒ 501(c) corporation ☐ 501(c) trust ☐ 401(a) trust ☐ Other trust

3

Significantly, EPA made this 2019 filing in November 2020, ***after EPA had an opportunity to review Mr. Nielsen's pro se IRS submission*** in December 2019. EPA once again answered deceptively by ***refusing to list***

the required figure of the "total of the end-of-year assets from the organization's books of account" as required by the Instructions for Form 990-T.

This evidence also raises questions about what EPA's return preparers knew regarding the falsity of these filings. Again, when EPA was formed in 1997, it was capitalized by transferring approximately ***$10 billion*** to EPA—which is ***many multiples of the $1 million EPA disclosed to the IRS.*** How could the return preparers have believed that EPA's assets were ***ever in the neighborhood of $1 million?*** Tellingly, the same firm prepared EPA's 2019 Form 990-T that listed ***more than $84 million*** in "unrelated business taxable income"—a fact by itself that exposed the falsity of the $1 million figure.

Thus, in repeated Form 990-T filings from at least 2007 through 2019, EPA ***concealed from the IRS more than 99.9% of the value of EPA's assets*** through using this deceptive "$1,000,000" figure on Form 990-T. The result of this series of false and deceptive representations to the Service was that anyone reviewing these filings for years after 2007 would naturally assume that later year values were in line with that $1,000,000 "baseline" figure.

If EPA had been truthful in these 990-T filings, the IRS would have received notice that EPA was operating a huge investment business, and was amassing a vast investment fund, with a *book value of tens of billions of dollars.*[47] EPA lied by stating a figure that was a ***tiny fraction*** of the real figure.[48]

Such false statements are ***classic evidence of consciousness of wrongdoing, and of a deliberate effort by EPA to mislead the Service***. Through these false statements, EPA and others took steps in the furtherance of a *Klein* conspiracy to defeat the lawful functioning of the IRS, as explained in more detail in Section III below.[49]

2. Through years of additional false statements, EPA also concealed its ownership and authority over foreign accounts in these 2007-2018 IRS filings, as further evidence of a *Klein* conspiracy.

Another repeated, material false statement on each of EPA's Form 990-T filings from at least 2007 until 2018 was that EPA ***falsely denied the existence of its foreign accounts***, valued in the billions of dollars. And confirming that EPA lied in its 2007 – 2018 filings of 990-T, in 2019 EPA first admitted the existence of its foreign accounts—a filing made ***after EPA learned of Mr. Nielsen's November 2019 submission to the IRS***.

[47] There is also reason to doubt EPA's representations about its income disclosed in its Form 990-T filings each year.

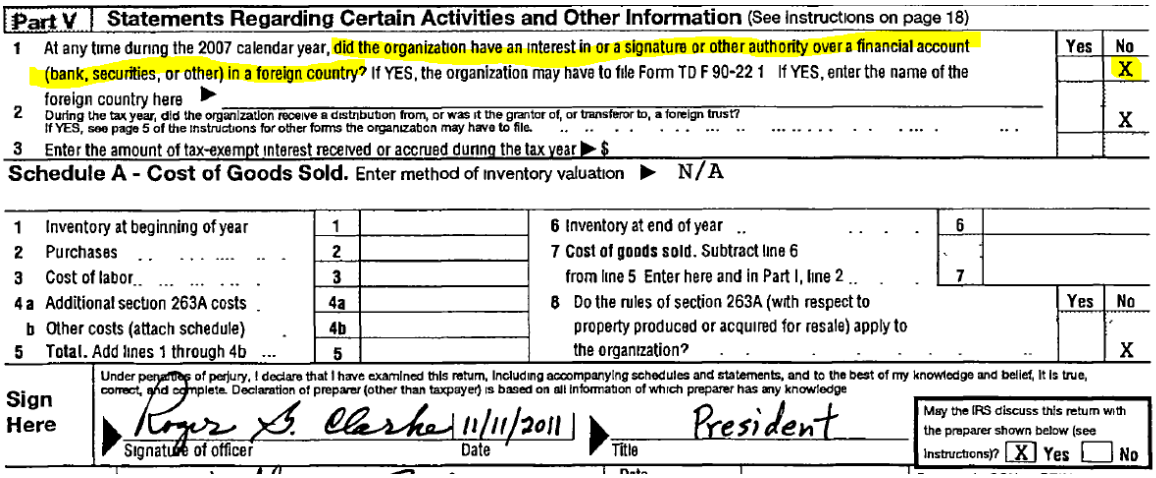
[48] The false statements on EPA's 990-Ts were not only misleading to the IRS, but to members of the Church as well. These Form 990-Ts are the only documents publicly available that give an indication of EPA's financial value and its ownership of foreign bank accounts. EPA's false statements on the Form 990-Ts concealed from Church members material facts they should have known regarding the manner in which their tithing contributions were used. Church members were thus also victims of EPA's abuses because of EPA's concealment of the truth.

[49] Aside from being evidence of a *Klein* conspiracy, these false statements are also violations of IRC § 7206 and 18 USC § 1001, as discussed in Section III, paragraphs A and B below.

Form 990-T also requires the organization to disclose whether it had an interest in, or a signature or other authority over, a financial account in a foreign country.[50] In violation of this legal duty, it appears EPA affirmatively lied in each Form 990-T filing seen from 2007 through 2018, and falsely denied that it had any foreign accounts.

For example, starting no later than 2007, EPA checked "No" in response to the relevant question in Form 990-T: "At any time during the 2007 calendar year, did the organization have an interest in or signature authority over a financial account (bank, securities, or other) in a foreign country? . . ."

EPA then repeated this false statement in each Form 990-T filing through 2018. See Exhibit 2. Below are the relevant excerpts of EPA's Form 990-T filings from 2007 through 2018:



Part V **Statements Regarding Certain Activities and Other Information** (See instructions on page 18)

		Yes	No
1	At any time during the 2007 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form TD F 90-22 1 If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see page 5 of the instructions for other forms the organization may have to file.		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

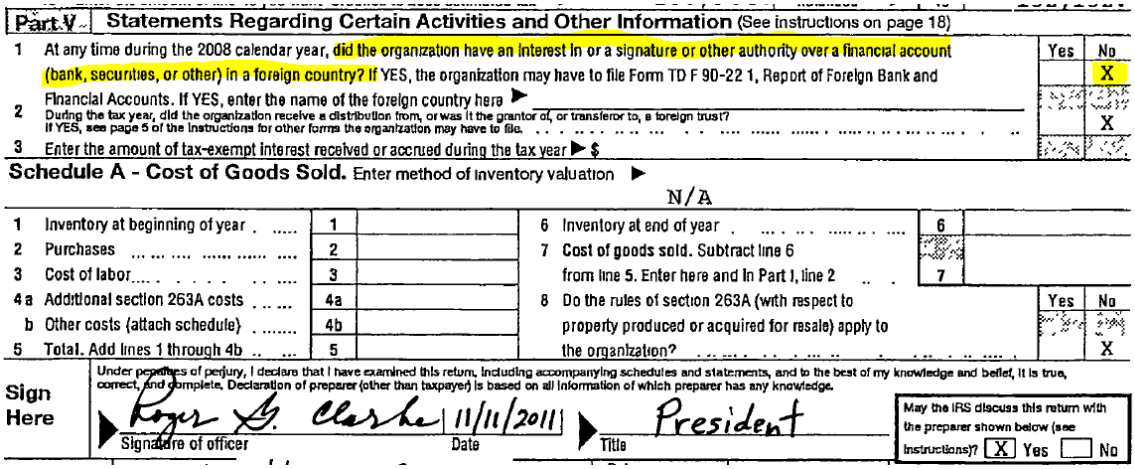
1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5 Enter here and in Part I, line 2	7	
3	Cost of labor	3		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No X
4a	Additional section 263A costs	4a					
b	Other costs (attach schedule)	4b					
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Roger G. Clarke 11/11/2011 President

Signature of officer Date Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No



Part V **Statements Regarding Certain Activities and Other Information** (See instructions on page 18)

		Yes	No
1	At any time during the 2008 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form TD F 90-22 1, Report of Foreign Bank and Financial Accounts. If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see page 5 of the instructions for other forms the organization may have to file.		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5. Enter here and in Part I, line 2	7	
3	Cost of labor	3		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No X
4a	Additional section 263A costs	4a					
b	Other costs (attach schedule)	4b					
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Roger G. Clarke 11/11/2011 President

Signature of officer Date Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

[50] *See* Form 990-T, Part V, and more recently, Part VI.

Part V **Statements Regarding Certain Activities and Other Information** (see instructions)

		Yes	No
1	At any time during the 2010 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form TD F 90-22 1, Report of Foreign Bank and Financial Accounts If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file.		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5 Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach schedule)	4b					X
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Roger G. Clarke | 11/11/2011 | President

Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Part V **Statements Regarding Certain Activities and Other Information** (see instructions)

		Yes	No
1	At any time during the 2011 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form TD F 90-22 1, Report of Foreign Bank and Financial Accounts If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file.		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5 Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach schedule)	4b					X
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Roger G. Clarke 10/24/12 | President

Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Part V **Statements Regarding Certain Activities and Other Information** (see instructions)

		Yes	No
1	At any time during the 2012 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If "Yes," the organization may have to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts. If "Yes," enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," see instructions for other forms the organization may have to file		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5. Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs (att statement)	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach statement)	4b					X
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

11-11-13 | Senior Vice Pres

Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Print/Type preparer's name | Preparer's signature | Date | Check | if | PTIN

Part V **Statements Regarding Certain Activities and Other Information** (see instructions)

		Yes	No
1	At any time during the 2013 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	Cost of goods sold. Subtract line 6 from line 5. Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs (att. schedule)	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach schedule)	4b					X
5	Total. Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

11-14-14 | Senior Vice President

Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Part V Statements Regarding Certain Activities and Other Information (see instructions)

		Yes	No
1	At any time during the 2014 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file Form FinCEN Form 114, Report of Foreign Bank and Financial Accounts. If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	**Cost of goods sold.** Subtract line 6 from line 5. Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs (att schedule)	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach schedule)	4b					X
5	**Total.** Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Roger D. Clarke | 11/16/15 | President
Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Part V Statements Regarding Certain Activities and Other Information (see instructions)

		Yes	No
1	At any time during the 2015 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts. If YES, enter the name of the foreign country here ▶		X
2	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file		X
3	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Schedule A - Cost of Goods Sold. Enter method of inventory valuation ▶ N/A

1	Inventory at beginning of year	1		6	Inventory at end of year	6	
2	Purchases	2		7	**Cost of goods sold.** Subtract line 6 from line 5. Enter here and in Part I, line 2	7	
3	Cost of labor	3					
4a	Additional section 263A costs (att schedule)	4a		8	Do the rules of section 263A (with respect to property produced or acquired for resale) apply to the organization?	Yes	No
b	Other costs (attach schedule)	4b					X
5	**Total.** Add lines 1 through 4b	5					

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Signature of officer | 11-14-16 | Senior Vice President
Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Amount of line 51 you want credited to 2018 estimated tax ▶ 1,250,000. Refunded ▶ 50 0.

Part V Statements Regarding Certain Activities and Other Information (see instructions)

		Yes	No
51	At any time during the 2017 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If YES, the organization may have to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts. If YES, enter the name of the foreign country here ▶		X
52	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If YES, see instructions for other forms the organization may have to file.		X
53	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

Signature of officer | 11/15/18 | SENIOR VICE PRESIDENT
Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes No

Print/Type preparer's name | Preparer's signature | Date | Check | PTIN

Amount of line 56 you want credited to 2019 estimated tax ▶ Refunded ▶ 57

Part VI Statements Regarding Certain Activities and Other Information (see instructions)

		Yes	No
56	At any time during the 2018 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If "Yes," the organization may have to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts. If "Yes," enter the name of the foreign country here ▶		X
57	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," see instructions for other forms the organization may have to file.		X
58	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

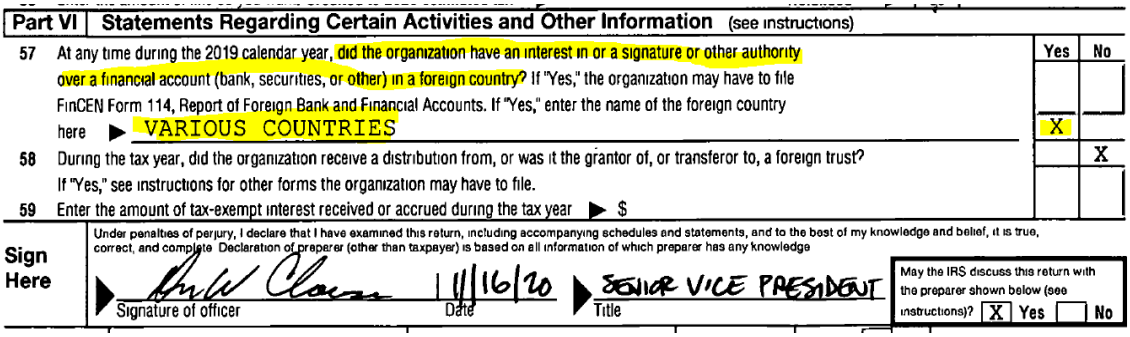
Signature of officer | 11/12/19 | SENIOR VICE PRESIDENT
Signature of officer | Date | Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

Abruptly, EPA finally admitted that it has foreign accounts, in its November 2020 Form 990-T filing for 2019. EPA's 990-T filings reprinted above demonstrate that EPA had *falsely denied under oath each year since at least 2007* that EPA has foreign bank and investment accounts (and thus FBAR filing obligations), which EPA officials attested to under oath each year. Now, EPA has finally admitted in a Form 990-T filing in November 2020 (for 2019) that EPA does have *foreign bank and investment accounts.* (See Exhibit 2k, EPA's more recently published 2019 Form 990-T filing.)[51] This acknowledgement is an admission of its past failures to disclose foreign accounts through FBARs, and thus that it is liable for FBAR penalties.

Nonetheless, even in EPA's 2019 Form 990-T, EPA ***continues to flout its IRS disclosure obligations and conceal its foreign accounts from the government***, by listing only "VARIOUS COUNTRIES" instead of the details required by 990-T. Mr. Nielsen revealed in his prior submissions that EPA's foreign accounts were in the ***billions of dollars, and FBAR penalties should be more than $2 billion.***

Below is an excerpt from EPA's Form 990-T filing for 2019:



Part VI	Statements Regarding Certain Activities and Other Information (see instructions)	Yes	No
57	At any time during the 2019 calendar year, did the organization have an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country? If "Yes," the organization may have to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts. If "Yes," enter the name of the foreign country here ▶ VARIOUS COUNTRIES	X	
58	During the tax year, did the organization receive a distribution from, or was it the grantor of, or transferor to, a foreign trust? If "Yes," see instructions for other forms the organization may have to file.		X
59	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ $		

Sign Here — Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge

▶ [signature] Signature of officer | 11/16/20 Date | ▶ SENIOR VICE PRESIDENT Title

May the IRS discuss this return with the preparer shown below (see instructions)? [X] Yes [ ] No

In this Memorandum and its Attachments, Mr. Nielsen has demonstrated that, based on his knowledge acquired while an employee of EPA, EPA holds significant foreign security portfolios, with an estimated value in excess of $9 billion.[52] Furthermore, because EPA holds foreign security portfolios, it follows that EPA would own, and/or have signing power over, a large number of foreign bank accounts.

The extent of EPA's foreign security portfolios is evident from the summary table of EPA's investments prepared by Mr. Nielsen, which forms part of the detailed description of EPA's securities investment fund in Attachment A. The silo headed "Intl Equity / FX" comprises the foreign security portfolios. As appears from Attachment A, EPA had 23 foreign security portfolios, with an aggregate estimated value of $9.7 billion in 2018.

In addition to owning foreign securities accounts, EPA must have owned, or at least had authority over, a number of foreign bank accounts. This is evident because EPA would not be able to make, or to receive, the

[51] *See* https://projects.propublica.org/nonprofits/display_990/841432969/download990pdf_09_2021_prefixes_81-93%2F841432969_201912_990T_2021092218968613.

[52] The estimated value of the foreign portfolios was $9.7 billion in February 2018. Most securities in these portfolios were held in foreign accounts that EPA should have reported in annual FBAR filings.

volume of payments required to invest in these foreign portfolios without owning and having signing power over foreign bank accounts.

In short, in at least two ways, EPA made regular, material false statements on its Form 990-T filings from at least 2007 through 2019 by:

a. Falsely stating that its assets were ***less than one-thousandth of their actual value***; and

b. Falsely claiming that it ***had no foreign accounts***, every year for more than ten years (at least 2007-2018)—until it reviewed Mr. Nielsen's *pro se* IRS submission in late 2019, and then finally admitted it does have foreign accounts—and yet it has continued to conceal required details about those accounts.

Through these material false statements, EPA and others who assisted it took steps that were in the furtherance of a *Klein* conspiracy to defeat the lawful functioning of the IRS, as explained in more detail in Section III below.

3. By willfully failing to file FBARs each year, EPA violated its duty to disclose its billions held in foreign accounts, as further evidence of a *Klein* conspiracy and as a basis for FBAR penalties.

A related issue is EPA's not only lying on Form 990-T in denying it had foreign accounts, but also failing to file required FBARs disclosing those foreign accounts. As discussed in the previous section, EPA owned and/or had signing power over a large number of foreign securities and bank accounts, with an aggregate estimated value in excess of $9 billion at the end of 2018. Thus, the value of EPA's foreign accounts was in the billions of dollars—vastly in excess of the threshold $10,000 annual FBAR filing requirement.

Title 31 of the U.S. Code requires a U.S. resident to file a report (FBAR) when the resident "makes a transaction or maintains a relation … with any foreign financial agency."[53] The specific requirement to file an FBAR is found in the Code of Federal Regulations, which requires a U.S. person "having a financial interest in, or signature or other authority over, a bank, securities, or other financial account in a foreign country shall report such relationship to the Commissioner…."[54]

The requirement to file FBARs[55] applies both to individuals and entities, with limited exceptions. The fact that an entity may claim to be exempt from tax, or may actually be exempt from tax under the IRC, does not excuse the entity from the substantive obligation to file FBARs.[56] On the contrary, exempt organizations are expected

[53] 31 U.S.C. § 5314.

[54] 31 C.F.R. § 1010.350.

[55] Since 2013 the FBAR has been FinCEN Form 114. Prior to that date it was Treasury Form TD F 90-22.1.

[56] Section 4.26.16.3.1 of the Internal Revenue Manual (IRM) specifically states: "The federal tax treatment of a United States person does not determine whether the person has an FBAR filing requirement…," and gives the example that "some trusts may not file tax returns but may have an FBAR filing requirement."

to file FBARs when they own or have signature authority over foreign accounts, as appears from the disclosure requirements of Form 990, Form 990-PF and Form 990-T.[57]

EPA's billions of dollars in foreign security portfolios are detailed in Attachment A, a summary prepared by Mr. Nielsen. The silo headed "Intl Equity / FX" comprises the foreign security portfolios.

Because EPA failed to disclose the existence of its foreign accounts on the Form 990-Ts that it filed every year, EPA represented in effect that it had no such accounts and that it was not required to file FBARs for those years.

Typically, substantial FBAR penalties are imposed for far smaller amounts in undisclosed foreign accounts. By comparison to the size of foreign accounts in reported FBAR cases, EPA's estimated amount of more than $9 billion in foreign accounts[58] is significantly larger than the typical foreign accounts in those reported FBAR cases. Historically, the Service has regarded ***foreign accounts that exceeded $1 million in value to be "large accounts."***[59] Mr. Nielsen's counsel reviewed published cases on FBAR penalties for undisclosed foreign accounts, which review reflects (1) that undisclosed accounts averaged approximately $6 million and (2) that penalties averaged approximately 40% of the value of the foreign accounts.[60]

Comparing the value of EPA's estimated amount of more than $9 billion in unreported foreign accounts to the average value of unreported accounts per the decided cases (which average approximately $6 million), shows that EPA's foreign unreported accounts are ***more than 1500 times*** the average unreported foreign accounts in these cases.[61] In the interests of equity and fairness, a significant FBAR penalty on EPA is merited for its flagrant disregard of its FBAR filing requirement each year.

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[57] Part V of Form 990 and Part VII-A of Form 990-PF require the organization to disclose whether it had an interest in or signature authority over a financial account in a foreign country. Part V (and commencing 2018, Part VI) of Form 990-T has the same disclosure requirement.

[58] In Attachment A, the silo headed "Intl Equity / FX" comprises the foreign security portfolios. To Mr. Nielsen's knowledge, the only portfolio that unlikely held securities through foreign accounts was INEQOL. This is because INEQOL was an "overlay" portfolio, which used domestic investments to offset risk profiles of other portfolios.

[59] In "Taxing Hidden Wealth: The Consequences of U.S. Enforcement Initiatives on Evasive Foreign Accounts" (IRS Publication 1500 for 2018, page 122), the analysis shows that foreign accounts were grouped into categories, the largest of which was above $1 million, referred to as "large accounts." Of the total reported foreign accounts, the number of accounts exceeding $1 million was 5% in 2008, and 4% in 2009; and in "Offshore Tax Evasion," GAO Report to Congress, March 2013 at page 13, the "mean" balance for unreported accounts in November 2012 was approximately $1.9 million.

[60] The research identified 80 decided cases over the period 2010 - 2020 involving FBAR enforcement. In 43 of these cases, the monetary penalties for failing to file FBARs were stated or determinable, and in 35 of these cases unreported foreign account values were also stated or determinable. The average penalty for failing to file FBARs was 40% of the value of the unreported accounts. This research undertaken by Mr. Nielsen's counsel will be provided to the Committee on request.

[61] To illustrate, $9 billion divided by $6 million = 1,500.

In sum, EPA was required to file FBARs each year disclosing these foreign accounts for at least 2007–2018.[62] As sophisticated financial executives and principals of EPA, EPA's then-President, CIO, and Controller clearly knew of the existence of EPA's vast foreign accounts. EPA's willful failure to file FBARs each year is further evidence of acts in furtherance of a *Klein* conspiracy showing an intent to conceal from the IRS the existence of EPA's vast foreign accounts, and as a result, the massive size of EPA's investment business enterprise.

When EPA's overall conduct is considered, EPA's ***pattern of fraud*** is clear: with ***each federal filing with the IRS and the SEC described here***, EPA has corruptly concealed its vast securities business. These false and fraudulent filings over more than ten years are both substantive criminal offenses as shown below, as well as acts in furtherance of a *Klein* conspiracy to defeat the lawful functioning of the IRS.

III. Criminal Statutes Violated by EPA.

EPA and those who willfully and corruptly assisted it are not only liable for a *Klein* conspiracy to subvert the functioning of the IRS, but also have committed the following substantive criminal offenses through the fraudulent filings, false statements, and other deceptive acts described above.

A. 18 USC § 371: EPA participated in a *Klein* conspiracy to defeat the lawful functioning of the IRS.

From at least 2007 through 2018, EPA—aided and abetted by those who willfully and corruptly assisted it[63]—conspired to defraud the United States and attempted to defeat the lawful information-gathering functions of the IRS. They have worked to conceal from the IRS EPA's for-profit securities investment business, the billions EPA holds in foreign accounts, and ultimately the truth that EPA is not tax-exempt. EPA has done so to avoid IRS scrutiny and to evade payment of taxes and FBAR penalties, thereby allowing EPA to continue competing unfairly with other investment firms.

As noted, such a conspiracy to defraud the United States pursuant to 18 U.S.C. § 371[64] by impeding, impairing, obstructing, and defeating the lawful governmental functions of the IRS in the ascertainment, computation,

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[62] Aside from being evidence of a "*Klein* conspiracy," EPA's willful failure to file FBARs is a substantive offense in violation of 31 U.S.C. § 5314.

[63] Those persons and entities outside EPA who are believed to have participated in the *Klein* conspiracy with EPA include, but are not limited to, (a) any return preparers outside EPA who prepared EPA's consistently false and incomplete Form 990-T filings, if they had knowledge of their falsity and acted with corrupt intent; (b) any "managers" of the 13 shell LLCs used for the 260+ fraudulent SEC filings of Form 13F, if they acted willfully and with corrupt intent; and (c) any non-EPA personnel who willingly participated in the "sham audit" of EPA, if they acted willfully and with corrupt intent.

[64] 18 U.S.C.A. § 371: **Conspiracy to commit offense or to defraud United States**

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

assessment, and collection of revenue (i.e., federal income taxes) constitutes a *Klein* conspiracy, which refers to *United States v. Klein*, 247 F.2d 908, 919-21 (2d Cir. 1957). In addition, EPA and those willfully and corruptly assisting it also violated section 371 by conspiring to commit some or all of the substantive offenses against the United States described below.

The overt acts in furtherance of the conspiracy include acting willfully, over the period of at least 2007 – 2018,[65] to do the following:

a. From 2007 through 2019, EPA willfully caused fraudulent Form 13Fs to be filed with the SEC ***in the names of other entities it controls***, rather than in EPA's own name as the law required, in violation of Section 13(f) of the Securities Exchange Act of 1934.

b. EPA, through filings bearing the signatures of its then-President and its Controller, has repeatedly signed and submitted to the IRS Form 990-T returns with material false statements each year that have fraudulently (1) understated EPA's assets as less than one-thousandth of their actual value (at least 2007–2019) and (2) falsely denied EPA's ***now-admitted*** ownership of foreign bank accounts (at least 2007 – 2018), in violation of IRC § 7206(1);

c. EPA has failed to file FBARs each year from at least 2007–2018, in violation of 31 U.S.C. § 5314;

d. EPA has repeatedly failed to file Forms 13F with the SEC in EPA's name each year from at least 2007–2018, in violation of section 13(f) of the Securities Exchange Act of 1934;

e. EPA has falsely claimed to be a 501(c)(3) exempt organization each year from its formation in 1997 until present, when in fact EPA was a for-profit investment firm with a twenty-two-year history of no charitable activity;[66] and thereby:

f. EPA has evaded assessment of tax through failing to file tax returns reporting EPA's income each year from its formation in 1997 until present, in violation of IRC § 7201;[67] and

g. EPA has failed to pay lawfully owed income taxes each year from its formation in 1997 to present.[68]

As shown in Section IV below, this conspiracy has resulted in unpaid federal tax of at least $20 billion. The conspiracy is ongoing, and if permitted to continue, it will result in even larger amounts of tax not being assessed or paid.

[65] Because the *Klein* conspiracy has continued until at least 2019, the statute of limitations remains open on the entire conspiracy from at least 2007.

[66] On the Form 990-T that EPA filed each year from 2007 - 2019, EPA claimed it was a section 501(c)(3) exempt organization.

[67] EPA's evasion of tax is dealt with in paragraph D below.

[68] EPA's tax liability is dealt with in Section IV below.

B. 26 U.S.C. § 7206: False Declarations under Penalties of Perjury, Preparation of False Returns.

EPA and its senior managers were sophisticated and well-versed in EPA's financial affairs. They knew well that EPA's assets were in the tens of billions of dollars, and that EPA had substantial foreign investment accounts and bank accounts estimated in the billions of dollars. Each year since 2007 through 2019, EPA through a senior official nonetheless signed the materially false IRS Form 990-T filings, under penalty of perjury.[69]

Under IRC **§** 7206(1),[70] a person is guilty of a felony if he willfully makes and subscribes any return containing a written declaration that it is made under penalties of perjury, which he does not believe to be true and correct as to every material matter. Signing a return that includes false answers to the questions concerning size of assets and existence of foreign bank accounts constitutes a false statement for purposes of IRC § 7206(1). *United States v. Clines*, 958 F.2d 578, 581-582 (4th Cir. 1992).

Moreover, under IRC **§** 7206(2), a person is guilty of a felony if he willfully assists in the preparation of any return that is false as to any material matter.

Here, EPA and anyone who willfully assisted it with corrupt intent violated section 7206 through these willful, material false statements in EPA's Form 990-T filings each year from at least 2007-2019.

C. 18 USC § 1001: False Statements.

The same false Form 990-T filings by EPA also violate 18 U.S.C. § 1001(a).[71]

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[69] EPA's former President signed EPA's Form 990-Ts that included the said false statements for 2007, 2008, 2010, 2011, 2012 and 2014. EPA's Controller signed EPA's Form 990-Ts that included the said false statements for 2013, 2015, 2017, 2018, and 2019.

[70] **§ 7206. Fraud and false statements**

> Any person who—
>
> **(1) Declaration under penalties of perjury**--Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or
> **(2) Aid or assistance**--Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; …
>
> shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

26 U.S.C. § 7206.

[71] **§ 1001. Statements or entries generally**

Under subsection (a)(1), EPA and anyone who willfully and corruptly assisted it "falsifie[d], conceal[ed], or cover[ed] up by any trick, scheme, or device a material fact," namely, the actual size of EPA's assets, and the existence of EPA's foreign accounts.

In addition, under subsection (a)(2), EPA and anyone who willfully and corruptly assisted it each "ma[de] [one or more] materially false, fictitious, or fraudulent statement[s] or representation[s]."

In addition, EPA's fraudulent filings of Form 13F in the names of other entities violate 18 U.S.C. § 1001(a), as discussed below.[72]

D. 26 U.S.C. § 7201: Tax Evasion.

By willfully failing to file tax returns disclosing its taxable income each year as required, EPA, aided and abetted by anyone who willfully and corruptly assisted it, has engaged in tax evasion in violation of IRC **§** 7201.[73]

For at least three separate and independent reasons mentioned above and discussed at length in Section IV below, EPA has never been exempt:

1. EPA has always operated as a for-profit securities investment business, with no religious, charitable, or educational activities.

> **(a)** Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully--
> **(1)** falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
> **(2)** makes any materially false, fictitious, or fraudulent statement or representation; or
> **(3)** makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.

18 U.S.C. § 1001.

[72] Material false statements in required SEC filings violate section 1001. *See, e.g., United States v. Bilzerian*, 926 F.2d 1285, 1289 (2d Cir. 1991), in which the defendants failed to make required disclosures in Schedule 13D and were convicted of false statements under section 1001, other offenses including securities fraud, and conspiracy to commit specific offenses and to defraud the SEC and the IRS.

[73] **26 U.S.C § 7201 Attempt to evade or defeat tax**

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 ($500,000 in the case of a corporation), or imprisoned not more than 5 years, or both, together with the costs of prosecution.

2. EPA's only distributions over 22 years went to for-profit, "private interests," an insurance company and a shopping mall.
3. Evidence of private inurement, by itself, defeats exempt status for EPA.

Never having been a tax-exempt organization, EPA should have filed Form 1120 tax returns each year disclosing its taxable income.

Based on *Spies* v. *United States* 317 U.S. 492, 499 (1943), the failure to file tax returns coupled with an affirmative act of evasion constitutes tax evasion. Here, the false statements in EPA's Form 990-Ts (discussed above) constitute affirmative acts of evasion. Taken together with EPA's willful failure to file tax returns, these false statements constitute tax evasion in violation of IRC § 7201 by EPA.

E. 31 U.S.C. § 5314: Failure to file FBARs.

By willfully failing to file FBARs as required each year to disclose the existence of EPA's foreign investment accounts and bank accounts, EPA violated 31 U.S.C. § 5314.[74]

Again, EPA and its senior executives plainly knew EPA owned large foreign accounts, with estimated value in the billions of dollars. They cannot not plausibly deny knowing of EPA's obligation to file FBARs that disclose these foreign accounts, especially since one of EPA's senior executives' signatures appear on EPA's Form 990-T each year from at least 2007 – 2018.[75]

F. Various criminal statutes applicable to EPA's more than 260 fraudulent SEC filings of Form 13F in other entities' names.

EPA's 260+ fraudulent filings of Form 13F constitute (a) willful false statements that subject EPA to prosecution under the Securities Exchange Act (15 U.S.C. § 78ff),[76] (b) false statements under 18 U.S.C. § 1001(a), as well as (c) overt acts to further a *Klein* conspiracy to defeat the functioning of the IRS.

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[74] **31 U.S.C. § 5314. Records and reports on foreign financial agency transactions**

> **(a)** Considering the need to avoid impeding or controlling the export or import of monetary instruments and the need to avoid burdening unreasonably a person making a transaction with a foreign financial agency, the Secretary of the Treasury shall require a resident or citizen of the United States or a person in, and doing business in, the United States, to keep records, file reports, or keep records and file reports, when the resident, citizen, or person makes a transaction or maintains a relation for any person with a foreign financial agency. . . .

[75] Again, Form 990-T provides a reminder of the requirement to file an FBAR where the organization owns or has signing authority over foreign bank or financial accounts. This reminder appears in the field almost immediately above the Form 990-T signature line where EPA management signed.

[76] (a) Willful violations; false and misleading statements

> Any person who willfully violates any provision of this chapter (other than section 78dd-1 of this title), or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this chapter, or any person who **willfully and knowingly makes, or causes to be made, any**

As noted, to illustrate by analogy to section 13(d) disclosure requirements, in *United States v. Bilzerian*, 926 F.2d 1285, 1289 (2d Cir. 1991), the defendants failed to make required disclosures in Schedule 13D and were convicted of securities fraud, false statements under section 1001, and ***conspiracy to commit specific offenses, and to defraud the SEC and the IRS***. The Court observed that **"criminal penalties are available against one who knowingly makes a false and misleading statement of material fact on a document required to be filed by the securities laws.** 15 U.S.C. § 78ff." *Id*. (Emphasis supplied).

The Court found the scheme impaired the functioning of not only the SEC, but also of the IRS: "As noted, the SEC is charged with administering and enforcing securities laws, and in order to perform its function must receive accurate and truthful disclosure. The function of the IRS in determining the legitimacy of a return similarly may be impaired by schemes generating tax losses and by false claims for deductions. Hence, the defraud conspiracy charges state an offense." *Id*. at 1302.

Like *Bilzerian*, EPA's scheme impaired the function of the SEC (both by failing to make required filings and by making false filings), and also impaired the functioning of the IRS (because failing to make SEC filings, making false SEC filings, and making false IRS filings hid the existence and size of EPA's $100 billion investment business and fund).

This is discussed in more detail in Attachment B.

IV. EPA is Liable for Substantial Unpaid Tax and FBAR Penalties.

This Section deals with the factual and legal bases for EPA's income tax liability, conservatively estimated to be in excess of $20 billion. It also deals with EPA's liability for FBAR penalties, conservatively estimated to exceed $2 billion.

The following indisputable facts should be kept in mind to understand EPA's tax liability:

1. First, in the 22-year relevant period (1997-2019), EPA has ***never undertaken any religious, charitable, or educational activities*** (hereafter "charitable activities"). Although EPA has undertaken a vast business enterprise, and made enormous profits, none of these profits has been applied to charitable activities in those 22 years.

> **statement in any application, report, or document required to be filed under this chapter or any rule or regulation thereunder** or any undertaking contained in a registration statement as provided in subsection (d) of section 78o of this title, or by any self-regulatory organization in connection with an application for membership or participation therein or to become associated with a member thereof which **statement was false or misleading with respect to any material fact**, shall upon conviction be fined not more than $5,000,000, or imprisoned not more than 20 years, or both, except that when such person is a person other than a natural person, a fine not exceeding $25,000,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

15 U.S.C. § 78ff (emphasis supplied). See also section 77t.

This fact is a ***dispositive*** one that makes exempt status impossible for EPA. The ***absence of charitable activities is sufficient by itself to show that EPA is not exempt.***

2. Second, EPA's ***only distributions over 22 years have been to the for-profit operations of an insurance company and a luxury shopping mall***.

   These distributions ***benefitted "private interests,"*** and as a result, they ***defeat exempt status*** for EPA.

3. Third, as a separate and independent basis why EPA is not exempt, there is compelling ***evidence of "private inurement."***

   For the reasons described in Section V below, EPA ***cannot overcome this evidence of private inurement***—which by itself disqualifies EPA from exempt status.[77]

This section of the Memorandum will first address why EPA fails the requirements of IRC § 501(c)(3), and will then address why EPA fails the requirements of IRC § 509(a). Because ***Integrated Auxiliaries must satisfy both IRC § 501(c)(3) and IRC § 509(a),*** this discussion will also show why EPA does not qualify as exempt from tax in its own right (under IRC 501(c)(3)), as well as why EPA does not qualify as an Integrated Auxiliary (under IRC 501(c)(3) and IRC 509(a)).

A. EPA and its vast securities investment fund are operated as a *for-profit business*, and EPA is not an "Integrated Auxiliary" of the Church.

EPA is simply one of the many ***for-profit*** businesses started by the Church mentioned above,[78] but those other ***for-profit*** businesses do not pretend to be tax-exempt. Again, as discussed above, EPA is not "operated exclusively for religious, charitable, … or educational purposes," as required to be exempt under IRC § 501(c)(3). In its 22-year history through 2019, EPA ***has not engaged in any "religious, charitable, … or educational" activities***, and its only distributions through 2019 have been for for-profit purposes. To the contrary, EPA's purpose is profit-making.

To illustrate, EPA's investment fund of $100 billion is comparable in size to funds managed by firms such as Blackrock, Bridgewater, and Fidelity, and is larger than most substantial hedge funds. EPA's assets are invested and managed by EPA staff or by outside professional investment advisors, similar to Goldman Sachs or any other large investment firm. The enormous size of EPA's $100 billion fund, together with the fact that EPA does not pay taxes, creates opportunities not available to most other investment firms for EPA to compete for the most lucrative "deals" with the largest investment firms.[79] In addition to unfairly competing with other investment firms, EPA is sufficiently large to partner with investment firms such as Goldman Sachs on investment positions.

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[77] Although there's some degree of overlap in case law applicable to private interests and private inurement, they are addressed separately. Private interests are addressed in this Section. Private inurement is addressed in Section V.

[78] *See* footnote 11 above, citing *Follow the Profit: A Guide to the LDS Church's For-Profit Companies*, https://www.ldsdaily.com/church-lds/follow-profit-guide-lds-churchs-profit-companies/.

[79] EPA's not paying tax meant that EPA had additional funds to invest. It also meant that EPA could invest in highly sought-after private equity assets that carried a high illiquidity premium. See footnotes 22 and 23 above.

In substance, what EPA's founders and principals have done is no different—and no more defensible—than if they had purchased the assets of an existing, substantial Wall Street investment firm, and then formed a "nonprofit" corporation to operate ***the same for-profit securities business***—a sham arrangement. By unilaterally declaring that EPA is entitled to exempt status as an "Integrated Auxiliary" of the Church, they have enabled EPA to operate such a ***for-profit*** securities investment firm ***tax-free*** for 22 years—in substance, the same sham arrangement.

EPA's actions belie any claim that it is an "Integrated Auxiliary" of the Church. Although EPA's incorporation documents represented that it would operate as a nonprofit corporation to support and to act as an Integrated Auxiliary of the Church, that has not occurred. In the 22-year relevant period, EPA has clearly never supported the Church or acted as an Integrated Auxiliary of the Church.

As noted, for the 22-year relevant period, the Church through other means—not EPA—funded all of the Church's religious, charitable, and educational activities, even during hard economic times.[80] Thus, in those 22 years, EPA did not support the Church or those activities, and made no distributions for a charitable, educational, or religious purpose.[81] In fact, EPA's only two distributions were for profit-making purposes. EPA clearly operates as a for-profit business.

B. EPA fails Integrated Auxiliary status by failing the requirements of IRC § 501(c)(3).

For EPA to be recognized as an Integrated Auxiliary, it needed to satisfy the requirements of Treasury Regulation 1.6033-2(h). Treas. Reg. 1.6033-2(h) sets out a various requirements for Integrated Auxiliary status, including the threshold requirements that the organization satisfy IRC § 501(c)(3) and IRC § 509(a)(1), (2), or (3). For the reasons outlined below, it's abundantly clear that year-on-year EPA failed the requirements of both IRC § 501(c)(3) and IRC § 509(a)(1), (2), or (3).

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[80] An article in the *Wall Street Journal* of February 8, 2020 reflects the admission by EPA officials that the Church did not use any of EPA's reserves during the last financial crisis in 2008, when its assets were already vast; instead, the Church simply cut its budget. *See* Exhibit 5, "The Mormon Church Amassed $100 Billion. It was the Best-Kept Secret in the Investment World," *Wall Street Journal* (Feb. 8, 2020).

[81] This statement covers the relevant period from EPA's formation in 1997 until November 2019, when Mr. Nielsen filed his Form 211 submission with the IRS. Since then, apparently demonstrating consciousness of guilt, it appears that EPA may be attempting to obscure its past wrongs by beginning to make qualifying distributions, after the media reported on the filing of this claim because of disclosure by someone other than Mr. Nielsen. For example, in February 2020, the LDS Business College was renamed "Ensign College." It then advertised half-tuition scholarships to all return missionaries who may apply. If these scholarships are funded by "Ensign Peak Advisors," it may be an attempt to obfuscate EPA's past behavior. An after-the-event obfuscation of this nature would be in keeping with EPA's recent "admission by conduct" of the deceptiveness of its prior filings of SEC Form 13F in the names of other entities, when EPA in 2020 suddenly and for the first time filed SEC Form 13F in its own name. Further, as noted, EPA has finally admitted—***but only after Mr. Nielsen's pro se IRS submission was made public in December 2019***—that EPA does in fact have foreign accounts—a fact that EPA falsely denied repeatedly before 2020 in its annual Form 990-T filings with the IRS discussed above.

1. The "purpose requirement" of IRC § 501(c)(3).

An organization may qualify for tax-exempt status under IRC § 501(c)(3) if the organization is "operated exclusively for religious, charitable, scientific, testing for public safety, literary or educational purposes, or to foster national or international amateur sports competition … or for the prevention of cruelty to animals."

While it's abundantly clear that EPA has not operated for most of the purposes enumerated in section 501(c)(3), consideration needs to be given to whether EPA may have operated for religious or charitable purposes.

If EPA has not operated for religious or charitable purposes, then it clearly falls short of the requirements of IRC § 501(c)(3), and is not exempt. This conclusion necessarily follows from the wording of Treas. Reg1.501(c)(3)-1(a), discussed below.

2. The "operational test" of IRC § 501(c)(3).

Treas. Reg. 1.501(c)(3)-1(a) provides:

> In order to be exempt as an organization described in section 501(c)(3), an organization must be … operated exclusively for one or more of the purposes of such section. If an organization fails to meet … the operational test, it is not exempt.[82]

The same regulation expands upon the "operational test" as follows:

> An organization will be regarded as operated exclusively for one or more exempt purposes only if it engages ***primarily*** *in activities which accomplish one or more … exempt purposes specified in section 501(c)(3)*. (Reg 1.501(c)(3)-1(c)(1) (emphasis added).

According to the "operational test" of 1.501(c)(3)-1 referred to above, clearly EPA has not satisfied the requirements of IRC 501(c)(3). In its 22-year history, EPA has not engaged *"**primarily** in activities which accomplish one or more … exempt purposes specified in section 501(c)(3)."* (*Id. (*emphasis supplied)). *Any such activities are* negligible or non-existent, and are not "primarily" the activities EPA engages in, as the Regulations require.[83]

3. The "prohibition limitation" of IRC § 501(c)(3).

Tres. Reg. 1.501(c)(3)-1(c)(1) goes on to prohibit certain organizations from being regarded as operating for exempt purposes:

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[82] The same regulation also refers to the "organizational" test for exempt status, which is not at issue here. Treas. Reg. 1.501(c)(3)-1(a).

[83] As noted, in the relevant period, EPA managed a small amount of Church and Affiliate assets, which comprise less than 8% of EPA's assets under management. Furthermore, Church assets (sometimes referred to as Treasury assets) comprise cash, which requires far less management than most other EPA securities, as "rolling cash" into commercial paper is routine and nearly fully automated. Managing Affiliate assets is also nearly fully automated as the activities here basically mimic EPA portfolio activities. As a result, EPA has provided minimal resources—and at times no resources—in managing Church and Affiliate assets.

An organization will not be so regarded if *more than an insubstantial part of its activities is not in the furtherance of an exempt purpose.*

This prohibition prevents EPA from being regarded as having an exempt purpose. For the 22-year relevant period, essentially <u>*all* of EPA's activities</u>, let alone "*more than an insubstantial part of its activities,*" were ***not in the furtherance of an exempt purpose.***

In light of the above, it's abundantly clear that EPA, both under the "operational test" and the associated "prohibition" limitation, fails to meet the requirements of IRC § 501(c)(3). Failing to satisfy IRC § 501(c)(3)'s requirements has great significance, as this precludes EPA from constituting an Integrated Auxiliary.[84] It also precludes any possibility of EPA being regarded as exempt "in its own right."

4. EPA also fails IRC § 501(c)(3) because EPA's only distributions over 22 years were to transfer $2 billion to benefit classic "private interests"—an insurance company and a luxury shopping mall.

EPA also fails IRC § 501(c)(3) because EPA's only two distributions over 22 years have been to benefit the *for-profit* operations of an insurance company and a shopping mall. These are classic "private interests" that disqualify EPA from exempt status, under the provisions of Treasury Reg. § 1.501(c)(3)-1(d)(ii).

Moreover, EPA's making 100% of its distributions to for-profit purposes also triggers a separate disqualification from exempt status, which applies "if ***more than an insubstantial part of its activities*** is not in furtherance of an exempt purpose." 26 C.F.R. § 1.501(c)(3)-1(c) (emphasis added).
EPA's only distributions in 22 years (approximately $2 billion) were as follows:

a. **<u>Beneficial Financial Group</u>**: In 2009, EPA distributed approximately $600 million for the benefit of Beneficial Financial Group, a ***for-profit commercial insurance company*** that accepts premiums in exchange for providing insurance coverage. This commercial business is affiliated with the Church and is taxed as a C corporation.

   EPA's role in this funding was concealed, however. EPA's transfer of $600 million of EPA funds was "funneled" through ***another for-profit entity*** affiliated with the Church, Deseret Management Corporation, which owns Beneficial Financial Group. Nonetheless, EPA's internal documents describe this transaction as a $600 million "withdrawal" ***from EPA***. In fact, EPA's then-President described this as a $600 million "***withdrawal***" in an internal EPA presentation made during March 2013: See Exhibit 7a: "Examples of withdrawals are … Beneficial Life: $600mm in 2009".

   Deception also characterized the announcement of this transaction. Public reports ***concealed EPA's role as the source of the $600 million to a "private interest,"*** i.e., to benefit the commercial insurance company Beneficial Life. Instead, news reports in *Deseret News*, the Church-owned and Church-controlled newspaper, implied that Deseret Management was the source of the funds, and ***said nothing about EPA's funding the $600 million received by this commercial insurance company***:

[84] Treas. Reg. 1.6033-2(h)(1) requires, *inter alia,* that an Integrated Auxiliary be "(d)escribed … in section 501(c)(3) …"

Deseret Management had to infuse[85] *$594 million into Beneficial to make up the deficit, but* **at no time did it use funds provided by LDS tithes**, *Willes noted.*
Deseret Management is a **for-profit operating company** *owned by The Church of Jesus Christ of Latter-day Saints. (Emphasis added).*

See Exhibit 6.[86]

Had it been publicly reported that ***EPA*** funded this $594 million transfer to a for-profit insurance company, "red flags" would have gone up. Revealing EPA as the source of the $594 million likely would have attracted attention to (1) EPA's distributions only to for-profit entities for 22 years, and (2) EPA's failure to engage in any charitable activities—two of the very same facts showing why EPA is not exempt, as shown below. Moreover, the report quoted above also deceptively stated that the $594 million did not include "tithes," when in fact EPA's enormous fund did include some money directly from "tithes."

EPA's $600 million transfer to benefit Beneficial Life was to aid the business enterprise of this commercial insurance company. As discussed in more detail below, "***It is not charity to aid a business enterprise***." *Redlands Surgical Servs. v. Comm'r*, 113 T.C. 47, 77–78 (1999), *review denied, decision aff'd,* 242 F.3d 904 (9th Cir. 2001)(emphasis supplied). EPA's $600 million distribution clearly conferred a private benefit to Beneficial Life, in violation of the prohibition contained in Treasury Reg. § 1.501(c)(3)-1(d)(ii), also discussed in more detail below.

Further, in *P.L.R. 200724035* (June 15, 2007), the IRS declined an application for exemption under IRC § 501(c)(3) by an entity that provided resources to an insurance company, because in doing so, the applicant operated for the "private benefit" of the insurance company; and, as a result, the applicant was operated "for a private purpose, rather than for a public purpose, as required by section 1.501(c)(3)-1(d)(1)(ii) of the regulations."

b. **City Creek Mall**: Between 2010 and 2014, EPA distributed $1.4 billion to another Church-affiliated entity, Property Reserve Inc. (PRI), for use to develop a luxury shopping mall in Salt Lake City. The land was owned by City Creek Reserve, Inc (CCRI), an affiliated company of PRI.

The development of the mall was undertaken by Taubman Centers, Inc, a private developer of shopping malls, together with CCRI. City Creek Mall has been described as a "world-class

[85] To explain further this concealment of EPA as the source of the transfer to this insurance company, while Deseret Management received $600 million from EPA and then paid $594 million of this to Beneficial Financial Group, the report's use of the word "infuse" creates the false impression that Deseret Management also funded the payment. An obvious motive to conceal EPA's role in providing $594 million to this for-profit insurance company was that EPA's benefiting such a "private interest" as a for-profit insurance company with hundreds of millions of dollars ***defeats EPA's claim to exempt status.*** Treasury Reg. § 1.501(c)(3)-1(d)(ii), discussed in more detail below. Beneficial Life was clearly a "private interest."

[86] Exhibit 6 is an article, "Beneficial Financial Group cuts 150 of its 214 Utah jobs," Deseret News (June 16, 2009) (https://www.deseret.com/2009/6/16/20323863/beneficial-financial-group-cuts-150-of-its-214-utah-jobs).

shopping and dining destination,"[87] and which includes a pedestrian skybridge, "a fully retractable glass roof that opens and closes, unique to any shopping center in the United States,"[88] as well as waterfalls and a fountain with choreographed songs and fire elements. It also houses over 60 stores and restaurants, including a number of upmarket retailers such as Coach, Michael Kors, Tiffany & Co., Salomon, Lululemon, Nordstrom and Macy's.

Constructing a for-profit shopping mall, let alone a luxury shopping mall, serves no charitable purpose. Developing a luxury mall is clearly not a charitable activity, particularly when the control of the shopping mall is placed in the hands of a for-profit partner (Taubman Centers), which does not have a charitable obligation.[89]

Furthermore, for the reasons outlined below, EPA's funding of this development clearly gave rise to a "private benefit" – both to Taubman Centers, and to the stores located in this Mall.

Taubman Centers derived a benefit because it became the co-owner and operator of the shopping mall, developed at a cost of $1.5 billion, but for which Taubman Centers paid a relatively minimal amount.[90] That CCRI may be seen as the co-developer of the shopping mall does not detract from the fact that Taubman derived a private benefit, given that Taubman operates the mall and derives the tenant rental.[91]

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[87] *See* https://usbusutah.com/blog/city-creek-center-world-class-shopping-dining-and-entertainment.

[88] *See* https://utah.com/city-creek-center.

[89] In *Redlands Surgical Servs. v. Comm'r*, 113 T.C. 47, 77–78 (1999), *review denied, decision aff'd,* 242 F.3d 904 (9th Cir. 2001), the Tax Court held: "To the extent that petitioner ***cedes control over its sole activity to for-profit parties having an independent economic interest in the same activity*** and having no obligation to put charitable purposes ahead of profit-making objectives, petitioner cannot be assured that the partnerships will in fact be operated in furtherance of charitable purposes. In such a circumstance, we are ***led to the conclusion that petitioner is not operated exclusively for charitable purposes***." *Id.* at 78 (emphasis supplied).

[90] Taubman paid only $75 million to become the owner under leasehold of a shopping mall that cost $1.5 billion. This is far less than what Taubman paid for other shopping mall leasehold improvements. In 2012, although City Creek Mall was the most recent mall that Taubman had opened at that time, the cost to Taubman was approximately 1/3 of the average price that Taubman paid for its other shopping malls. http://s1.q4cdn.com/799408505/files/doc_presentations/2012/Investor_Presentation_v3_08_12.pdf This amounts to a classic private benefit, as Taubman has operated the mall and earned rent from tenants based on the underlying asset value of $1.5 billion. Although Taubman may have paid some of the "excess" rent to CCRI, this still amounts to a significant private benefit. Taubman effectively admitted to this benefit in its 2012 annual report: "Other income increased *primarily* due to an increase in sponsorship revenue and income from City Creek Center." (emphasis added – see http://s1.q4cdn.com/799408505/files/doc_financials/2012_AnnualReport.pdf), page numbered 43). Furthermore, Taubman's stock price increased significantly after the mall was opened, in part due to an improvement in the market, but no doubt also influenced by this private benefit: https://www.macrotrends.net/stocks/charts/TCO/taubman-centers/stock-price-history.

[91] In *Redlands Surgical Servs. v. Comm'r,* on appeal, the Ninth Circuit held that Redland had: "***ceded effective control over the … surgery center to private parties, conferring impermissible private benefit.*** We also affirm the tax court's conclusion that the benefit conferred on private parties by the surgery center's operations prevents Redland … from attaining tax-exempt status …" *Id.* at 78 (emphasis supplied).

> The stores located in the City Creek Mall also derived a private benefit from the extra business that they attracted due to their location in what has become regarded as the premier shopping destination in downtown Salt Lake City.[92]
>
> Similar to EPA's $600 million transfer to benefit the commercial insurance company Beneficial Financial Group, EPA's then-President listed this $1.4 billion among EPA's "Examples of withdrawals" in his 2013 presentation discussed above, Exhibit 7b. His presentation described it as "City Creek: $1,400mm over 5 years." See Exhibit 7a.

Thus, **EPA's own internal documents contradict its more recent attempts to deny that this $1.4 billion transaction was a "withdrawal" to benefit the luxury mall, City Creek, and that this $600 million transaction was a "withdrawal" to benefit the for-profit insurance company, Beneficial Life.** [93]

Both of the above sets of withdrawals or distributions—which were the only withdrawals or distributions EPA made over 22 years—conferred significant ***private benefits*** to commercial businesses, and ***are in direct conflict with the prohibition in 26 C.F.R. § 1.501(c)(3)-1.*** Again, as stated in *Redlands Surgical Services,* "***It is not charity to aid a business enterprise***." *Redlands Surgical Servs. v. Comm'r*, 113 T.C. at 77–78 (emphasis supplied). And as with *Redlands Surgical Services*, "conferring … significant private benefits" on a business leads to the inevitable conclusion that the organization "is not operated exclusively for charitable purposes within the meaning of section 501(c)(3)." *Id.*

In short, over the 22 year relevant period, EPA has operated a for-profit securities investment business that (a) used none of its $100 billion for any religious, charitable, or educational purpose, and (b) made distributions to only two recipients, in each case to ***for-profit*** activities that are "private" interests. Distributing or transferring a

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[92] In Rev. Rul. 77-111, 1977-1 C.B. 144, the IRS determined that "an organization whose purpose is to revive retail sales in an area of economic decline by constructing a shopping center does not qualify for exemption." This determination was based on a finding that: "The activities of the organization … ***result in major benefits accruing to the stores that will locate within the shopping center***. The organization does not limit its aid to businesses that are owned by members of a minority group or to businesses that would only locate within the area because of the existence of the center. The end result is that this ***organization's activities are directed to benefit the businesses in the shopping center rather than exclusively to accomplish 501(c)(3) purposes***." (Emphasis added).

[93] Following the recent media attention on EPA and its withdrawals or distributions to benefit BFG and the City Creek Mall, EPA has tried to re-label these as "investments." In Exhibit 5, an article appearing in the *Wall Street Journal* on February 8, 2020, the presiding bishop of the Church stated that these distributions were "investments," rather than withdrawals or distributions. This statement is wholly inaccurate. The payments were described in EPA internal memoranda as "withdrawals" or "distributions" (terms not used within EPA to describe investments), and they were neither listed as investments nor included in EPA's investment portfolios. (*See* Exhibit 7, internal EPA presentation prepared by its then-President describing as examples of "withdrawals" EPA's funding of City Creek Mall and Beneficial Life.) Furthermore, if EPA had treated them as investments, this fact would have been obvious, as they would then have constituted part of EPA's Private Equity Portfolio, which at that time had a value of approximately $200 million. It would have been patently obvious if the Private Equity Portfolio grew from $200 million to $2.2 billion. In addition, Mr. Nielsen believes that there was never any documentation (such as loan documents, shares, or member interests) to suggest or support that the payments were investments for EPA. If EPA produces documentation supportive of investment, this documentation should be scrutinized carefully for authenticity.

combined $2 billion for an insurance company and for a shopping mall clearly conflict with EPA's requirement to operate for religious, charitable, or educational purposes. Furthermore, either of these facts is sufficient, by itself, to defeat tax-exempt status for EPA, pursuant to 26 C.F.R. § 1.501(c)(3)-1. That regulation:

- Requires EPA to have "engage[d] ***primarily*** in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3)," – see [1] below;

- Denies EPA exempt status "if more than an ***insubstantial*** part of its activities is not in furtherance of an exempt purpose," – see [2] below;

- Also denies EPA exempt status "unless it serves a ***public*** rather than a ***private interest***," – see [3] below; and

- Significantly—places ***the burden on EPA*** to prove it meets these requirements for exempt status – see [4] below.

The relevant portions of this regulation are highlighted below:

> (c) Operational test—(1) Primary activities. An organization will be regarded as operated exclusively for one or more exempt purposes [1] ***only if it engages primarily in activities which accomplish one or more of such exempt purposes*** specified in section 501(c)(3). An organization will not be so regarded [2] ***if more than an insubstantial part of its activities*** is not in furtherance of an exempt purpose.
>
> *** * ***
>
> (d) Exempt purposes—(1) In general. (i) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:
>
> (a) Religious,
> (b) Charitable,
> (c) Scientific,
> (d) Testing for public safety,
> (e) Literary,
> (f) Educational, or
> (g) Prevention of cruelty to children or animals.
>
> (ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph [3**]** ***unless it serves a public rather than a private interest***. Thus, to meet the requirement of this subdivision, [4] ***it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests*** such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

26 C.F.R. § 1.501(c)(3)-1 (emphasis added, annotations [1]-[4] added).

Clearly, operating or funding an insurance business[94] and a shopping mall[95] are not exempt purposes. Furthermore, it has been held that a "single substantial nonexempt purpose or activity will destroy the exemption."[96] EPA's distributions totaling approximately $2 billion to an insurance company and shopping mall are clearly activities that are "substantial." Thus, "***more than an insubstantial part of [EPA's] activities*** is not in furtherance of an exempt purpose." 26 C.F.R. § 1.501(c)(3)-1(c)(1). Moreover, both an insurance company and a shopping mall are business enterprises, and as is well-settled,"[i]t is not charity to aid a business enterprise." *Redlands Surgical Servs. v. Comm'r*, 113 T.C. 47, 77–78 (1999), *review denied, decision aff'd,* 242 F.3d 904 (9th Cir. 2001)(quoting Bogert & Bogert, The Law of Trusts and Trustees, sec. 364 (Rev.2d ed.1991) (quoting *Butterworth v. Keeler,* 219 N.Y. at 449, 114 N.E. at 804); fn. refs. omitted.]

In light of the above, ***EPA has clearly failed the "private interest prohibition"*** of 26 C.F.R. § 1.501(c)(3)-1, Furthermore, the burden is on EPA to prove that it is has not failed this private interest prohibition, as the regulation provides that "***it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests . . . ."*** 26 C.F.R. § 1.501(c)(3)-1(d)(ii). As shown below, EPA cannot rebut these incontrovertible facts.

[94] In *Am. Ass'n of Christian Sch. Voluntary Employees Beneficiary Ass'n Welfare Plan Tr. v. United States*, 663 F. Supp. 275, 278 (M.D. Ala. 1987), *aff'd sub nom. Am. Ass'n of Christian Sch. Voluntary Employees Beneficiary Ass'n Welfare Plan Tr. by Janney v. United States*, 850 F.2d 1510 (11th Cir. 1988), where an entity operated a plan to sell insurance coverage "the court must conclude that, assuming the plan does operate for exempt religious purposes, the plan also operates for a substantial and significant nonexempt purpose: to provide insurance on the basis of premiums received. And the court must further conclude that, because of the presence of this substantial nonexempt purpose, the plan is not exempt under § 501(c)(3)."

[95] In P.L.R. 201404013, the Service declined an application for recognition of exemption under IRC 501(c)(3) for a community-based grocery store and other related ventures, stating: "you do not qualify for exemption under section 501(c)(3) as a charitable or educational organization … You are not organized and operated exclusively for exempt purposes as described in section 501(c)(3) … for the reason (that) … (y)our activity of operating a grocery store and related ventures do not further exclusively section 501(c)(3) purposes."

[96] *Family Tr. of Massachusetts, Inc. v. United States*, 892 F. Supp. 2d 149, 158–59 (D.D.C. 2012), *aff'd,* 722 F.3d 355 (D.C. Cir. 2013)(quoting cases including *New Dynamics Found. v. United States*, 70 Fed. Cl. 782, 799 (2006)).

5. Providing for possible future events does not satisfy IRC § 501(c)(3).

When challenged by the Service, EPA's likely justification for its lack of demonstrable religious or charitable activities[97] will be that the EPA investment business, including the EPA investment fund, "is a rainy-day account to be used in difficult economic times."[98]

Significantly, as discussed below, the U.S. Tax Court has already resolved this issue. It rejected the argument that the future intended use of funds for exempt purposes may justify an organization's IRC § 501(c)(3) exemption.

In *Make A Joyful Noise, Inc v. Commissioner*, 56 T.C.M. 1003 (1989), the U.S. Tax Court upheld the Commissioner's decision to revoke an organization's qualification as tax-exempt under IRC 501(c)(3) where the organization had earned income that was "not insubstantial," and had used little of it to achieve its charitable goals.

In finding for the Service, the court took cognizance of the fact that the organization had *"made almost imperceptible progress towards achieving its charitable goals,"* and held that the organization's qualification as exempt *"cannot be sustained simply because the intended use of its net receipts was for exempt purposes." Id.*

The findings in *Make a Joyful Noise* apply equally to EPA, given the huge wealth that EPA has accumulated over the decades, and EPA's lack of progress towards achieving its ostensible charitable goals during the relevant period.

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[97] EPA's then-President and other senior EPA executives have on occasion explained that EPA has 4 "charges" or purposes. This explanation is a subterfuge. The reality is that EPA has never satisfied these "charges," and even if EPA had satisfied these "charges," doing so would not satisfy the requirements on IRC § 501(c)(3) given the relatively vast size of EPA's profit-making business enterprise.

EPA's ostensible "charges" are: to fund prophetic initiatives; to supplement the operating budget of the COP; to backstop the pension plan and affiliated entities; and to post collateral for COP operations. To Mr. Nielsen's knowledge, EPA has not undertaken any of these activities in the 22-year relevant period, except possibly for posting collateral for COP operations. Even if that occurred, the collateral would have been relatively minor, and likely a decimal percent of EPA's assets.

[98] The founding President and Managing Director of EPA reportedly made this statement, according to the same February 8, 2020 article in the *Wall Street Journal* referred to above. See Exhibit 5. Significantly, the article reports Church officials' statement that EPA did not use any of its reserves during the last financial crisis in 2008, when its assets were already vast; instead, the Church simply cut its budget. Moreover, saving for a "rainy-day" can never justify failure to satisfy the requirements of the IRC. If EPA truly intends to save for a "rainy-day," ***it needs to do so as a tax-paying corporation, rather than abuse the tax exemption privileges of the IRC.***

The same article has further significance in that it shows the willingness of EPA officials to contradict or retract prior statements to suit present purpose. On a number of occasions, EPA's then-President has stated to EPA employees that EPA's funds would be used in the "Second Coming" of Christ. However, following the recent publicity on the issue, he changed his position in the *WSJ* article (Exhibit 5), and stated that EPA assets will be used before, rather than at the time of, the Second Coming.

Based on the reasoning of *Make a Joyful Noise*, EPA should be liable for payment of income tax for the income that EPA has earned year on year for over two decades.[99]

6. Accumulation of funds is evidence of commercial purposes and failure to satisfy IRC 501(c)(3).

EPA's vast accumulation of funds provides strong evidence of its nonexempt commercial purpose.

In *Presbyterian and Reformed Publishing Co. v. CIR*, 79 T.C. 1070 (1982), *rev'd sub nom. Presbyterian & Reformed Pub. Co. v. Comm'r*, 743 F.2d 148 (3d Cir. 1984), both the Tax Court and the Third Circuit recognized the principle that "unexplained accumulations of cash may properly be considered as evidence of commercial purpose." *Id*., 743 F.2d at 157.

At issue was a church-affiliated corporation in the publishing business that had operated for decades for exempt purposes, and in fact in the 1930s had applied for and received an IRS determination that it was exempt. (*Id.,* 79 T.C. at 1091 n.4). In 1974, after the organization began to realize profits for the first time, it ***notified the IRS*** that it was "accumulating surplus cash as a 'building fund'" for an office and warehouse. It appears from the approximately $300,000 expenditure on the building, *id*. at 151, that the "building fund" was approximately that amount.

The Tax Court found that the organization was not entitled to exemption under IRC § 501(c)(3) due to its accumulation of "substantial" funds and other factors that the court regarded as evidence of "nonexempt commercial purposes." The Third Circuit reversed based on the facts of that case, but affirmed some of the same principles that make EPA liable here:

> There is no doubt that unexplained accumulations of cash may properly be considered as evidence of commercial purpose. *Id*. at 157.
>
> [T]he simple act of accumulating revenues may properly call into question the ultimate purpose of an organization ostensibly dedicated to one of the enumerated pursuits under 501(c)(3). (*Id*. at 158).

EPA is liable under these same principles. In contrast to EPA, the entity in *Presbyterian and Reformed Publishing Co*. had no "unexplained" accumulation of cash, but had notified the IRS of its surplus (well under $1 million) and its intended use of the funds in advance, after operating for an exempt purpose for decades. EPA, however, presents the opposite facts: EPA (1) never operated or engaged in any activities for an exempt purpose in over two decades; (2) made annual false statements to the IRS that concealed its billions in assets and in foreign accounts; and (3) thus concealed from the Service its massive size, its for-profit uses of its only distributions, and its failure to engage in any exempt activities. Thus, the facts of EPA fit squarely within the principles applied by the Court in *Presbyterian and Reformed Publishing*, in that EPA's "unexplained accumulations of cash may properly be considered as evidence of commercial purpose"; and further that EPA's "accumulating revenues" rightfully "call[s] into question the ultimate purpose of an organization ostensibly dedicated to one of the enumerated pursuits under § 501(c)(3)." *Id*. at 157-158.

[99] In finding as such, the Court in *Make a Joyful Noise* relied in part on the "commensurate test," established in Revenue Ruling 64-182, 1964-1 C.B. 186. While the commensurate test has changed over time in line with changes in policy and legislation, B. Hopkins in "The Law of Fundraising" at p. 351 states that the IRS reaffirmed the commensurate test by applying it in the 2011 Charitable Spending Initiative. This initiative was aimed at organizations with low levels of program expenditures in comparison to total revenue.

7. Substantial commercial purpose, sizable profits, and substantial reserves are evidence of failure to satisfy IRC § 501(c)(3).

As further support for EPA's liability, in *Church of Scientology of California v. CIR*, 83 T.C. 381 (1984), the Tax Court held that an organization that had been granted tax-exempt status under IRC § 501(c)(3), was not operated exclusively for exempt purposes, and as a result was not exempt under IRC § 501(c)(3).

Included in the Tax Court's reasons for finding that the organization was not operated exclusively for exempt purposes was the finding that the organization had a substantial commercial purpose. Here the Tax Court found that the organization's activities had a "commercial hue" due to the way they were conducted and the eagerness of the organization "to make money." *Id*., 83 T.C. at 475.

Moreover, the Court in *Church of Scientology of California* also found other factors that indicated a commercial purpose:

> However, we do not rest our decision on the commercial hue of petitioner's activities alone. Our conclusion that petitioner had a substantial commercial purpose is buttressed by two additional factors: the existence of *sizable annual profits and substantial cash reserves*.
>
> Although the presence of substantial profits is not necessarily determinative of a commercial purpose, such profits constitute "evidence indicative of a commercial character …" *Id*. at 480 (emphasis added).

In that case, the organization had cash reserves of more than $1 million dollars, and had earned annual profits of more than $1 million dollars. By comparison, EPA's reserves and recent annual profits are both in the order of 3000 – 6000 times the size of those in *Church of Scientology of California.*[100]

The same factors that led the Court in *Church of Scientology of California* to find there was no exemption under IRC § 501(c)(3) apply with even greater force to EPA, namely:

a) EPA has been conducting activities that are not just of a "commercial hue" – EPA's activities are *wholeheartedly* commercial in character;

b) EPA has made sizable annual profits—not just in the millions of dollars, but in the billions of dollars; and

c) EPA has substantial financial reserves—not just in the millions of dollars, but in the tens of billions of dollars.

The conclusions and findings of the Court in *Church of Scientology of California* ***thus establish further the basis for EPA's liability***:

[100] EPA's cash reserves are in the region of $3 billion, which is 3,000 times larger than the cash reserves in *Church of Scientology of California*. EPA's annual return is in the region of $6 billion, which is 6,000 times larger than the profits in *Church of Scientology of California*.

> In the instant case, the record is replete with evidence that petitioner was obsessed not only with making money but also with *building up massive cash reserves* …
> In conclusion, petitioner's highly commercial method of operations, its high annual profits and its substantial, undedicated cash reserves convince us that it had a substantial commercial purpose …
> Petitioner offered several justifications for its large reserves …
> However, the bulk of the evidence in the record undermines the legitimacy of these justifications, so that we have no difficulty in concluding that *the reserves were accumulated to make money for the Church and its leaders. Id*. at 490 (emphasis added).

This same conclusion is inescapable in relation to EPA. EPA is therefore not exempt, and is liable for tax, on the same basis as the organization in *Church of Scientology of California.*

8. Securities trading and accumulation of funds falls short of charitable purpose and of IRC § 501(c)(3).

In *Western Catholic Church v. Commissioner*, 73 T.C. 196 (1979), the Tax Court upheld the revocation of an exemption, essentially on the basis that the primary activity of the organization was investing, which fails the requirements of IRC § 501(c)(3).[101] The Court stated:

> The facts present in the instant case are similar to those in *Randall Foundation v. Riddell*, 244 F.2d 803 (9th Cir. 1957). In *Randall Foundation*, the principal activity of the organization was securities trading. Most of the profit earned from such activity was accumulated, although small charitable contributions were made. Testimony was introduced in that case to the effect that the accumulated funds were to be used for a boys' home but that more funds were needed before that objective could be pursued. In holding that the organization's principal activity was the trading of stocks and that it was not tax-exempt, the Court stated:
>
> > It is not our intention to say that a case can never be made out on the facts of a particular situation for aggregation of funds by a corporation for ultimate disposition to a charitable purpose. But *a corporation which in its inception engages in trade, business or speculation, and only has a vague charitable design*, does not in our opinion come within the terms of the statute.
>
> As in *Randall Foundation, petitioner had no obligation to use the accumulated funds for the avowed purpose*. The similarities between the two cases as to *the nature of the profit-making activities, the accumulation of those profits, and the vague, ultimate, albeit potentially exempt, disposition of those profits* make Randall Foundation difficult to distinguish. We therefore find that petitioner was not primarily engaged in activities which accomplished a tax-exempt purpose." (*Id*. at 213) (emphasis added).

Western Catholic Church and *Randall Foundation* are controlling and establish EPA's liability. Just as EPA has done in remarkably similar facts, the corporations from inception engaged in business, with only a vague charitable design, and without an obligation to use the accumulated funds for the avowed purpose. EPA's failure to use accumulated funds for the avowed purpose, the nature of EPA's profit-making activities, the accumulation of those profits, and the vague, potential future disposition of those profits make EPA

[101] In *Western Catholic Church,* the organization had accumulated $190,000. This is less than 1/1000 of 1% of EPA's assets of approximately $100 billion.

indistinguishable from both *Western Catholic Church* and *Randall Foundation.* In fact, the Service's position is even stronger against EPA because EPA's level of profit-making activities and EPA's profits are far larger than in either of the other two cases.

In sum, based on *Western Catholic Church* and *Randall Foundation*, EPA is similarly liable because it has not primarily engaged in activities that accomplished a tax-exempt purpose.

9. Competing with commercial firms is strong evidence of primary nonexempt purpose which fails IRC § 501(c)(3).

According to a leading treatise (*Mertens)*,[102] "[c]ompetition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes," which fails the requirements of IRC § 501(c)(3).

In *People's Educational Camp Soc. Inc. v. C.I.R*. 331 F.2d 923 (2d Cir. 1964), the Second Circuit reviewed the decision of the Tax Court denying exemption to a corporation that had competed commercially through accumulation of "large" surpluses of $2 to $3 million and expansion of its income producing facilities.

The Court of Appeals affirmed the decision of the Tax Court "to deny exempt status to petitioner, an entity which has directed *so much of its revenues toward improving its ability to compete as a commercial operation through the accumulation of large surpluses and the expansion of its income producing facilities." Id.* at 935 (emphasis added).

By comparison, EPA doesn't simply spend "so much of its revenues" toward its ability to compete as a commercial operation; it spends ***all*** of its revenues doing so. EPA has accumulated not simply "large" surpluses of $2 to $3 million, but rather a ***massive surplus in the region of $100 billion*** and a vast expansion of its income producing facilities.

Similarly, in *Easter House v. U.S*., 12 Cl. Ct. 476, 485–86 (1987), *aff'd,* 846 F.2d 78 (Fed. Cir. 1988), the Claims Court held that a ***single substantial activit***y that competes with commercial organizations disqualifies an organization from exemption, despite the presence of any other exempt purposes. In arriving at this finding, the court stated:

> The court finds that the business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service is its primary goal. Plaintiff is in competition with other adoption services. Thus, it is competing with other commercial organizations providing similar services. This is far different than an organization which solicits charitable contributions. Plaintiff's competition provides its activities with a commercial hue. (*Id*.)

Likewise, in *B.S.W. Group, Inc. v. Commissioner of Internal Revenue*, 70 T.C. 352, 1978 WL 3344 (1978), the Tax Court held in favor of the IRS where the IRS declined an application for exempt status. The Court stated:

> We must agree with the Commissioner that petitioner's activity constitutes the conduct of a … business of the sort which is ordinarily carried on by commercial ventures organized for profit … Competition with commercial firms is strong evidence of the predominance of nonexempt commercial purposes. (*Id.* at 358).

[102] *Mertens Treatise on the Law of Federal Income Taxation*, Chapter 34, Exempt Organizations, § 34:7.

EPA is an even more compelling case for finding nonexempt commercial purpose. Because accumulation (in the late 1950s) of "large" surpluses of $2 to $3 million and expansion of its income producing facilities was enough to deny exemption, EPA's $100 billion in surplus must lead to the same conclusion.

10. Failing to allocate resources to exempt purposes fails IRC § 501(c)(3).

EPA's failure to allocate resources to charitable purposes also defeats exempt status. The *Mertens* treatise further states:

> An organization must "engage" in the activities that further its exempt purpose. Thus, exempt status may be revoked if an exempt organization … never meaningfully organizes or allocate *(sic)* resources to any of its stated exempt purposes. *Mertens Law of Fed. Income Tax'n § 34:7.*

In the 2016 case of *Community Education Foundation v. Commissioner of Internal Revenue*, T.C. Memo. 2016-223, T.C. (RIA) P 2016-223, 112 T.C.M. (CCH) 637 (2016), the Tax Court held in favor of the IRS in revoking a nonprofit corporation's tax-exempt status. The Court stated:

> Notably, petitioner did not over time meaningfully organize *or allocate resources* to any of the aforementioned (exempt) activities. Accordingly, on the basis of the record before us, the Court concludes that petitioner failed to satisfy the operational test because it did not engage in any activity that accomplished one or more of the exempt purposes in section 501(c)(3). The Court therefore holds that … respondent properly revoked petitioner's tax-exempt status effective January 1, 2008, because it was not operated exclusively for an exempt purpose. (*Id*. at 12)(emphasis added).

This reasoning demands the same result for EPA. EPA too "did not over time meaningfully organize or *allocate resources* to any of the aforementioned (exempt) activities." *Id*. (emphasis added).

11. Conclusion: EPA clearly fails the requirements of IRC § 501(c)(3).

The authority outlined above overwhelmingly illustrates that EPA's activities have caused it to fail the requirements of section 501(c)(3). Furthermore, in addition to EPA's activities, the fact the EPA ***failed to act, and therefore failed to allocate resources, for charitable purposes*** are yet further grounds that EPA fails the requirements of IRC 501(c)(3).

In summary, while EPA pretends to be a charitable organization, its operations reveal that it is anything but a charitable organization. The employment of a team of professional investment managers, who are dedicated full-time to generation of wealth through activities typical of private equity funds, investment bankers and hedge funds, competing with large Wall Street funds and institutions, combined with the lack of charitable distributions or activities, clearly demonstrates that EPA is not a charitable organization. For all of these reasons, EPA clearly fails the requirements of IRC § 501(c)(3), and also does not qualify as an Integrated Auxiliary.

C. EPA also fails to qualify as an Integrated Auxiliary because it fails to fulfill the requirements of IRC § 509(a)(1), (2), or (3).

As mentioned above, to be an "Integrated Auxiliary," an entity is not only required to satisfy IRC § 501(c)(3), but it must also satisfy IRC § 509(a)(1), (2), or (3). As shown above, EPA does not satisfy section 501(c)(3) for

the reasons stated above in that section.

A separate and independent reason why EPA does not constitute an Integrated Auxiliary is that EPA does not satisfy the requirements of IRC § 509(a)(1), (2), or (3), essentially because EPA has not operated for religious or charitable purposes. As discussed below, EPA's failure to satisfy IRC § 509(a)(1), (2), or (3) is relevant for more than one reason.

1. The four subsections of IRC § 509(a).

IRC § 509(a)(1) describes as "public charities" organizations that are "inherently public" because of their activities. This typically includes churches, schools, and certain hospitals. Clearly, EPA does not satisfy the requirements of IRC § 509(a)(1) because in 22 years it performed no religious or charitable activities.

Turning to IRC § 509(a)(2), it describes organizations that are afforded public charity classification because they receive significant percentage of their funding from public support. Specifically excluded from IRC § 509(a)(2) are organizations that earn more than one third of their income from investments. Clearly, EPA does not satisfy the requirements of IRC § 509(a)(2).

IRC § 509(a)(4) describes organizations that are organized and operated for testing for public safety. Clearly, EPA does not satisfy the requirements of IRC § 509(a)(4).

The remaining subsection of IRC § 509(a), namely IRC § 509(a)(3), describes "supporting" organizations, in the sense that these organizations operate "exclusively for the benefit of, to perform the functions of, or to carry out the purposes of" any organization described under IRC § 509(a)(1) or IRC § 509(a)(2).

In light of the above, the question is whether EPA can be considered a "supporting" organization of the Church and whether it satisfies the requirements of IRC § 509(a)(3).[103] For the reasons outlined below, it's clear that EPA fails to satisfy the requirements of IRC § 509(a)(3).

2. EPA falls short of being an IRC § 509(a)(3) "supporting organization."

As discussed above, EPA fails to satisfy the requirements of section 501(c)(3). That failure also means EPA cannot qualify as a supporting organization under section 509(a)(3), for the following reasons:

To be recognized as a supporting organization under IRC § 509(a)(3), the organization must first satisfy the requirements of IRC § 501(c)(3).[104] This follows from IRC § 509, as it would be absurd to designate public

[103] Because EPA fails to satisfy the requirements of IRC § 509(a)(3), more specifically, the requirements of IRC § 509(a)(3)(A), EPA clearly falls short of the requirements to be a supporting organization. In light of that fact, it is not necessary to consider whether EPA satisfies the further requirements of IRC § 509(a)(3)(B).

[104] There is wide acceptance that satisfying IRC § 501(c)(3) is a threshold requirement of IRC § 509(a). This can be seen, for example, from the examples listed under Reg 1.509(a)-4 which describe the entities as "an organization described in section 501(c)(3)".

charity or private foundation status to an entity that is not exempt. Furthermore, the need to satisfy IRC § 501(c)(3) is also mentioned in the Regulations.[105]

When IRC § 509(a)(3) was enacted in 1969, Congress reiterated this threshold requirement of IRC § 501(c)(3) status, before an organization may be considered a supporting organization under IRC § 509(a)(3). In discussing the newly-enacted IRC § 509(a)(3) provision, Congress stated:

> However, this does not change the basic requirement for exemption in section 501(c)(3) that the organizations have been organized and operated exclusively for tax-exempt purposes listed in that provision.[106]

For the reasons discussed in paragraph B above, it is clear that EPA fails to satisfy the requirements of IRC § 501(c)(3). For this reason alone, EPA falls short of being a supporting organization under IRC § 509.

3. EPA is not operated for the benefit of a charity.

Even if EPA somehow satisfied the requirements of IRC § 501(c)(3) (which is not the case), EPA would in any event fail to qualify as a supporting organization due to the "operational" test of IRC § 509(a)(3)(A). That test requires that the supporting organization is:

> … operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of an organization described in IRC § 509(a)(1) or (2).[107]

As noted, EPA's Articles of Incorporation state that EPA "shall be operated as a supporting organization (within the meaning of section 509(a)(3) of the Internal Revenue Code) with respect to … The Church of Jesus Christ of Latter-day Saints."

In light of the above, to qualify under the operational test, EPA would be required **solely** to engage in activities that benefit or support the Church.

For example, EPA would be required to carry on "a program which both supports and benefits"[108] the Church, or to "carry out its religious purposes by providing various forms of religious instruction."[109]

The reality, however, is that aside from the relatively minor management of some of the Church's investments, EPA has conducted a full-fledged investment business, for-profit, that does not support nor benefit the Church, or any other public charity.

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[105] For example, this requirement is mentioned in Treas. Reg. 1.509(a)-1: "Section 509(a) defines the term *private foundation* to mean any … organization described in section 501(c)(3) other than … ."

[106] General Explanation of the Tax Reform Act of 1969, H.R. 13270, 91st Congress, Pub 91-171, page 59, footnote 29.

[107] These types of organizations are public charities.

[108] This wording follows Example 1 of Reg 1.509(a)-4(e)(2).

[109] This wording follows Example 2 of Reg 1.509(a)-4(e)(2).

4. Conclusion: EPA clearly fails the requirements of IRC § 509(a).

EPA obviously fails the requirements of IRC § 509(a)(1), IRC § 509(a)(2), and IRC § 509(a)(4), and also fails the requirements of section 509(a)(3)—due to the fact that EPA fails the "operational" test of IRC § 509(a)(3) by failing to support the Church or any other charity. Consequently, it is abundantly clear that EPA fails the requirements of section 509(a).

In sum, EPA has plainly failed the requirements of both IRC § 501(c)(3) and IRC § 509(a), with the result EPA was neither exempt from tax, nor an Integrated Auxiliary.

D. Consequences of EPA's failing to satisfy Integrated Auxiliary status.

1. EPA was never exempt from tax and should have paid tax every year.

The immediate and direct consequence of EPA's never having satisfied Integrated Auxiliary status is that EPA was subject to federal tax on the taxable income that it has earned since its 1997 formation.

By EPA failing to satisfy section 501(c)(3):

a) EPA is, by definition, precluded from being an Integrated Auxiliary (in relation to the Church or any other organization);[110]

b) EPA is precluded from being exempt "in its own right" (in other words, EPA cannot be exempt in a capacity other than as a supporting organization and Integrated Auxiliary). This is because it is inconceivable that EPA falls into any of the other types of exempt organizations listed in IRC 501(c).[111]

By failing the requirements of IRC § 501(c), EPA has never been exempt from tax, and should have paid tax every year.

2. EPA also apparently failed to apply for exemption, and cannot be exempt as a result of such failure.

For still other reasons, EPA cannot claim exempt status. Regardless of EPA's failure to satisfy the requirements of IRC § 501(c)(3), IRC § 508(a) requires organizations described in IRC § 501(c)(3) to apply to the Service for recognition of tax-exempt status, failing which the organization "shall not be treated as an organization described in section 501(c)(3)," and as a result, will be treated as taxable.

Although Integrated Auxiliaries are excluded under IRC § 508(c) from the affirmative requirement to apply for IRC § 501(c)(3) status, the above analysis leaves no doubt that EPA failed to qualify as an Integrated Auxiliary. As a result, EPA was required to apply for exemption in order to be treated as exempt.

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[110] Treas. Reg. 1.6033-2(h) requires that an Integrated Auxiliary satisfy IRC § 501(c)(3) and IRC § 509(a). EPA clearly fails both IRC § 501(c)(3) and IRC § 509(a).

[111] IRC § 501(c) lists a number of organization types as potentially exempt. It's inconceivable that EPA falls into any of these categories. EPA has claimed to be exempt under IRC § 501(c)(3) in its Articles of Organization and its annual Form 990-T filings. The prospects of EPA being exempt under any other subsection of IRC § 501(c) are extremely remote.

It appears that, in the relevant period, EPA has never applied to the Service for recognition as exempt under IRC § 501(c)(3).[112] By failing to comply with this critical procedural requirement, and for this reason alone, EPA cannot be treated as exempt.

3. EPA was required to file tax returns every year.

A further consequence of EPA's failing to be an Integrated Auxiliary is that EPA should have filed tax returns every year since its formation in 1997.

This consequence flows from IRC § 6033(a)(1), which requires organizations exempt from tax to file annual tax returns, unless they qualify for an exception from filing. While IRC § 6033(a)(3) provides an exception from filing for Integrated Auxiliaries, for the reasons discussed above, EPA fails the requirements of an Integrated Auxiliary.[113]

In light of the above, EPA should have filed tax returns each year since it was formed in 1997. Because EPA was subject to tax as a C corporation, EPA should have filed Form 1120 tax returns disclosing its taxable income every year. In addition, EPA is liable for late filing penalties for having failed to file Form 1120 tax returns every year.[114]

As a result, EPA should have paid tax every year as a C corporation.[115] In Attachment D, calculations and estimates of the tax EPA owes are provided, along with an estimate of FBAR penalties due. Conservatively speaking, EPA has earned taxable income of approximately $60 billion from formation to the end of 2018,[116] and it's very likely that EPA has earned significantly more than this amount to the end of 2019.[117]

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[112] To the best of Mr. Nielsen's knowledge, EPA never applied to the Service for exemption. Furthermore, it would have been strange for EPA to apply for exemption, because by doing so EPA would in effect be admitting that it was not an Integrated Auxiliary.

[113] Regulation 1.6033-2(g)(1)(i) also exonerates Integrated Auxiliaries from having to file annual tax information returns. However, an organization must first qualify under IRC § 501(c)(3) to qualify for the filing exemption: "CGM's claim that it is not required to file tax returns because it is a tax-exempt church under 26 U.S.C. § 6033(b)(1) is beside the point because it cannot qualify as a § 501(c)(3) tax-exempt organization, which is a prerequisite to the § 6033 filing exemption." *Church of Gospel Ministry, Inc. v. United States,* 640 F. Supp. 96, 98 (D.D.C. 1986) aff'd, 830 F.2d 1188 (D.C. Cir. 1987).

[114] Instead of filing Form 1120 tax returns disclosing its taxable income every year as EPA was required to do, instead EPA has annually filed Form 990-Ts, disclosing only minimal amounts of "Unrelated Business Income."

[115] If, for some reason, the Service elects not to enforce EPA's failure to comply with IRC 501(c)(3), EPA would then be taxable as a private foundation. This is discussed in paragraph 4 below.

[116] EPA's earnings and the related tax liabilities have been "modeled" in Attachment D.

[117] The estimates of income in Attachment D are based on EPA assets having a basis in 2018 of $60 billion. This is inherently conservative. The real basis for EPA assets in 2018 is likely substantially less than $60 billion, and probably in the region of $50 billion. Furthermore, Attachment D does not take into account income after 2018.

As Attachment D and Table A reflect, the tax payable on EPA's taxable income of $60 billion exceeds $20 billion before interest and penalties.[118] For the reasons outlined below, the statute of limitations should permit full recovery of this tax liability from EPA.

4. EPA has also violated the rules governing "private foundations."

As established above, EPA is not tax-exempt, principally (1) because of evidence that it engaged in private inurement as discussed above, (2) because it engaged in no religious or charitable activities in its 22-year history from 1997-2019, and (3) because its only distributions ($2 billion) were to benefit "private interests" of a commercial insurance company and luxury shopping mall. Thus, EPA is not exempt in its own right under IRC § 501(c)(3); and it also has failed to qualify as an Integrated Auxiliary, because it failed the requirements of **both** IRC § 501(c)(3) and IRC § 509(a)(1), (2), or (3).

Nonetheless, *even a tax-exempt entity that failed, as EPA has* failed—**to *make any distributions for religious or charitable purposes for 22 years***—would still face substantial liability for failing to follow the rules governing "private foundations."

Attachment C explains this analysis in detail, and a brief summary is provided here. To explain succinctly, if EPA were somehow considered as exempt, it would be classified as a "private foundation" under IRC § 509(a)—and would have been subject the rules for private foundations. IRC § 509(a) effectively classifies an exempt organization either as a "public charity" or a "private foundation." As explained above, EPA is not a "public charity," and thus would be treated as a private foundation.[119]

In short, "private foundation" status presents an alternative approach for the Service to consider. Even if EPA were for some reason treated as exempt from tax, EPA should still have paid tax and filed returns as a private foundation every year. Because EPA failed to make distributions, EPA's tax liability on this basis exceeds $13 billion before interest and penalties.[120]

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[118] This amount is based on EPA being taxed as a C corporation, and the corporate tax rate of 35% that generally prevailed prior to 2018. See Attachment D.

[119] IRC § 509(a) achieves this classification by listing 4 different types of organizations, and describing the qualifying criteria for each. If an organization satisfies the criteria of any of the 4 listed organization types, it is regarded as a public charity for tax purposes. If an organization fails to satisfy the criteria of all 4 listed types of organization, it is regarded as a private foundation for tax purposes. The factors that would cause EPA to be regarded a private foundation under these circumstances are discussed in Attachment C.

[120] This amount is based on EPA being taxed as a private foundation, and largely comprises the tax for failing to make distributions, which is 30% of the distributable amount each year. The distributable amount each year was generally 5% of the value of EPA's assets, less Net Investment Income Tax (NIIT). EPA's distributable amount from formation to date comes to more than $40 billion. The excise tax for failing to make distributions comes to more the $12 billion, and taken together with NIIT, EPA's liability as a private foundation is estimated to exceed $13 billion. See Attachment D.

5. EPA should have filed FBARs every year and is subject to penalties for failing to do so.

Aside from having to file tax returns, as mentioned above EPA was also required to file Foreign Bank Account Reports (FBARs) every year.[121]

As mentioned above and in Attachment A, EPA holds significant foreign equity portfolios.[122] It follows also that EPA also has owned or has signing power over a number of foreign bank accounts.

Notwithstanding EPA's numerous foreign securities and bank accounts, based on EPA's Form 990-T filings in the relevant period, EPA has not been filing FBARs annually as required under Title 31 of the U.S. Code. This is evident from the Form 990-Ts that EPA has been filing from 2007 to 2018.[123]

Failing to file FBARs when required to do so is a serious violation of federal law, particularly when the failure to disclose the foreign accounts arises in the context of a failure to disclose the income from these accounts on tax returns. In many cases the Service has asserted significant penalties for failing to file FBARs, even though the amounts in question were generally far smaller than is likely with EPA.[124]

In these cases, the Service (in its capacity of administering both the Internal Revenue Code and the Bank Secrecy Act regulations on behalf of Treasury) typically takes firm and decisive action against parties that fail to file FBARs when legally required to do so, particularly when they have also checked the box on their tax returns ***attesting under oath*** that they do not own or have authority over foreign accounts.

In cases such as this, the Service generally takes the view that the party knew of the existence of the FBAR filing requirement, due to the question on the tax return, and chose to ignore it by stating falsely on the return that they did not own or have authority over foreign accounts. This is exactly what EPA has done each year, from at least 2007 to 2018. Furthermore, failing to file FBARs has allowed EPA to avoid the IRS becoming aware of its vast foreign accounts, and therefore of the existence of its vast securities investment business.

FBAR civil penalties can be 50% of the maximum balance or value of the foreign account where the non-filing transgression is willful. Given that it was EPA's senior management who signed EPA's Form 990-T every year

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[121] Further details of EPA's FBAR filing requirements are outlined in Section II, Paragraph I3.

[122] A summarized form of EPA's international equity portfolios can be seen in Attachment A.

[123] As noted, Part V (and more recently Part VI) of Form 990-T asks the question whether the organization had "an interest in or a signature or other authority over a financial account (bank, securities, or other) in a foreign country." EPA has consistently checked "No" in response to this question for all years, from 2007 to 2018. However, following the unauthorized release of Mr. Nielsen's *pro se* submission in 2019, EPA's 2019 Form 990-T disclosed for the first time since 2007 that EPA has an interest in foreign accounts.

[124] EPA's unreported foreign accounts are estimated to exceed $9 billion in value. This is massive compared to the foreign accounts that most other parties report on FBARs or should report on FBARs. The magnitude of EPA's foreign accounts compared to the foreign accounts that other parties report or should report on FBARs is discussed in Section II-I-3.

and given the likely number of EPA foreign accounts, it is difficult to believe that EPA's non-filing transgressions were anything but willful.

In the interests of consistency and fairness, the Service should apply the same rigorous standards of FBAR enforcement and penalties to EPA that the Service applies to other parties with FBAR violations, especially given that most other parties with FBAR violations have far fewer foreign accounts with significantly smaller balances than is likely the case with EPA's FBAR violations.

Because EPA has not filed FBARs reporting its foreign bank accounts, EPA is liable for FBAR failure to file penalties. EPA's failure to file penalty ***for 2018 alone*** is estimated at more than $2.4 billion.[125]

6. Tax statute of limitations has not expired because EPA has failed to file tax returns.

Because EPA was not exempt for the reasons outlined above, EPA should have filed income tax returns annually to disclose its income each year.[126]

When a taxpayer has filed returns, the statute of limitations for assessment of taxes expires three years from the due date of the return, or the date the return is filed, whichever is later.[127] Given that EPA has failed to file income tax returns, the statute of limitations has not expired or even started to run.

In light of the above, it is open to the Service to recover income tax from EPA for all past years since EPA's formation in 1997. It is also open to the Service to assert late filing and late payment penalties for all past years.

7. FBAR penalty statute of limitations has not expired because EPA has failed to file FBARs.

Because EPA owned and/or had signature or other authority over foreign accounts, EPA should have filed FBARs annually to disclose its foreign accounts each year.

The statute of limitations for assessment of FBAR penalties is generally six years from the due date of the FBAR.[128]

However, because EPA's Form 990-T false statements denying the existence of its foreign accounts are evidence of a "*Klein* conspiracy" to defraud the United States, the "*Klein* conspiracy" statute of limitations has not expired at least for ***2007 and all later years***.

In *United States v. Canale*, No. 14 CR. 713 KBF, 2015 WL 3767147 (S.D.N.Y. June 17, 2015), the defendant's failure to file FBARs disclosing his foreign accounts—together with the failure to report income from the

[125] *See* Attachment D.

[126] EPA should have filed a corporate tax return Form 1120 each year.

[127] IRC § 6501(a).

[128] 31 U.S.C. § 5321(b)(1).

foreign accounts—was regarded as a conspiracy to defraud the United States, and as such the statute of limitations did not begin to run. The Court held in *Canale*:

> Defendant's principal argument as to timeliness is that the conspiracy count is time-barred because the Government has not alleged overt acts or offenses personally involving him which occurred … within the six-year statute of limitations. This argument fails as a matter of law. Defendant is not charged with the substantive offenses of tax evasion or the willful filing of false tax returns; he is charged with a conspiracy. As a result, the Indictment is not time-barred so long as at least one overt act in furtherance of the main goals of the conspiracy occurred within the limitations period. (*Id*. at 3).

In EPA's Form 990-T yearly filings since at least 2007, EPA falsely denied having foreign accounts. Thus, as in *Canale*, each such filing was an overt act in furtherance of a conspiracy to defraud the United States. As a result, the statute of limitations has not run because of these ongoing acts in furtherance of this conspiracy that has continued during the six-year FBAR limitations period.

V. Private Inurement is a Separate and Independent Reason Why EPA Cannot Qualify for Exempt Status.

The analysis above focuses on two of the three reasons it was impossible for EPA to be tax-exempt under section 501(c)(3)—because EPA ***never engaged*** ***in any "religious, charitable, … or educational" activities*** for the relevant 22-year period, and because its only distributions were to benefit the for-profit businesses of an insurance company and a luxury shopping mall—which are ***"private interests."***

Now, this Section V provides the legal analysis for a separate and independent reason why EPA is not exempt: evidence of ***private inurement that EPA cannot rebut.*** The ***"disappearance" of large assets from EPA's books***—made possible because ***senior EPA officials ensured they were not subject to basic internal controls or oversight***—is strong evidence of private inurement. So is the resulting unreliability of EPA's books, given that EPA regularly has assets "disappear" from its books. Such evidence of private inurement makes it impossible for EPA to carry its burden of establishing that "no part of the net earnings of [EPA] inures to the benefit of any private shareholder or individual." 26 U.S.C. § 501(c)(3); *see, e.g.*, *Tony & Susan Alamo Found. v. Comm'r*, 63 T.C.M. (CCH) 2422 (T.C. 1992) (failure to produce adequate and reliable records proving the absence of inurement provides "independent grounds for rejecting [a] claim to tax-exempt status").[129]

As discussed at length above, in 2011 Mr. Nielsen first discovered the "disappearance" of assets from EPA's books, when he learned that a cash receivable from a bank of approximately $1 million had been deleted from

[129] In *Tony & Susan Alamo Found. v. Comm'r*, 63 T.C.M. (CCH) 2422 (T.C. 1992), the Tax Court approved the retroactive revocation of an entity's tax-exempt status where the entity's accounting records were incomplete, even though they were prepared by independent accountants, and "generally tied, in total, to the Forms 990, Return of Organization Exempt from Income Tax, for each year." By contrast, EPA's accounting records are prepared by in-house employees, under the direction of its senior management, and EPA has never filed Form 990 tax returns, or any other tax returns, other than Form 990-T reporting minimal UBI. In *Tony & Susan Alamo Found*. the Tax Court stated: "We are convinced that part of the net earnings did inure to the benefit of Tony and Susan … the complete domination of petitioner's financial affairs by Tony and Susan, coupled with the lack of adequate records, also compels this Court to conclude that petitioner's net earnings inured to the benefit of Tony and Susan." *Id*. In similar vein, EPA's financial affairs have been completely dominated by three senior managers, and EPA's records from which assets are simply deleted are unreliable and incomplete.

the EPA accounting system. When Mr. Nielsen questioned how this asset could simply "disappear," the EPA employee responsible for preparing EPA's internal financial reports revealed that assets were ***routinely deleted from EPA's books, with the knowledge of EPA's Controller.***

Mr. Nielsen reported his discovery to senior EPA officials and urged that this practice be stopped. These officials responded as if they would correct this practice, but in 2016, Mr. Nielsen learned from an EPA Financial Analyst with knowledge that EPA's practice of deleting assets had not only occurred for ***at least 5 years before the 2011 incident*** discovered by Mr. Nielsen, but had also ***continued unabated through at least 2016***—covering a period of at least 10 years.

The deletion of assets from an entity's books is an extreme practice that is anathema to basic accounting standards. Furthermore, EPA's deletion of assets was also in breach of its record keeping requirements under the IRC.[130]

It may be trite to state that assets cannot simply vanish. The fact that assets were made to appear to vanish by deleting them from EPA's accounting records strongly suggests private inurement, as well as an attempt to conceal this inurement by manipulating the accounting records. See *United States v. Simmerman, supra.*

As discussed below, the "disappearance" of EPA's assets is both evidence of private inurement, and has caused EPA's records to become inaccurate and unsuitable as a means for EPA to discharge its burden of proving it is entitled to exempt status under section 501(c)(3). In fact, the "disappearance" of assets, taken on its own, is good reason for the IRS to audit EPA for additional evidence of private inurement, although as shown below any amount of private inurement precludes exempt status.[131] In addition, EPA's high "control risk" is further good reason in itself to audit EPA.[132]

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[130] See, e.g., *Church of Gospel Ministry, Inc. v. United States*, ("CGM has ***failed to keep records adequate to determine the full nature of its operations and failed to show that its operations do not inure in part to the private benefit of its officers.*** In order to claim tax-exempt status a corporation must keep records sufficient to show specifically its items of gross income, receipts and disbursements and show that it is entitled to the exemption. 26 U.S.C. § 6001; 26 C.F.R. §§ 1.6000–1(c), 31.6001–1."((emphasis supplied) In addition, as discussed in section III D above, EPA failed to qualify as an Integrated Auxiliary, with the result EPA was required to file an annual information return (Form 990) under IRC 6033, including "A balance sheet showing its assets" (Treas Reg 1.6033-2(2)ii(E)), and to "keep such books and records as are required to substantiate [this] information". (Treas Reg 1.6001-1(c)). Based on publicly available Form 990 filings, EPA has never filed the required information returns, or balance sheets, and would not have been able to substantiate its assets due to the deletion of assets from its accounting records.

[131] The IRM covering the audit of tax-exempt organizations requires analysis of "any disposition of assets for possible inurement to officials." (IRM 4.75.11.15.4 (01-18-2017), paragraph 3.F).

[132] The IRM lists the internal controls to be evaluated in auditing an exempt organization, including factors such as whether the organization reconciles the bank statements to the books, segregation of duties, active board of directors, outside third parties such as a government agency overseeing the organization, and annual independent audit. (IRM 4.75.11.5.1 (01-18-2017)).

A. *Any* amount of "private inurement" disqualifies EPA from tax exemption.

Section 501(c)(3) expressly requires the absence of "private inurement," i.e., that "no part of [its] net earnings…inures to the benefit of any private shareholder or individual."

The statute's prohibition of private inurement is absolute. "Private inurement" in ***any amount*** disqualifies an entity from exempt status under section 501(c)(3). *See, e.g., Founding Church of Scientology v. United States*, 412 F.2d 1197, 1202 (Ct. Cl. 1969)("Congress, when conditioning the exemption upon 'no part' of the earnings being of benefit to a private individual, specifically intended that the amount or extent of benefit should not be the determining factor.")(Emphasis supplied). Thus, ***any amount of private inurement*** violates the statute's prohibition that "no part" of an exempt organization's earnings inure to the benefit of individuals. *See, e.g.*, *Boynton v. Comm'r*, 51 T.C.M. (CCH) 145 (T.C. 1985) ("The amount or extent of the benefit is not determinative.")*; Orange County Agr. Soc., Inc. v. Comm'r*, 893 F.2d 529, 534 (2d Cir.1990) ("An organization will not qualify for tax-exempt status if even a small part of its income inures to a private individual.").

B. EPA bears the burden of proving the absence of "private inurement."

An organization bears a "heavy burden" to show it satisfies all requirements for exemption under section 501(c)(3), including the absence of private inurement.[133]

In a case cited above, *Church of Gospel Ministry, Inc. v. United States*, 640 F. Supp. 96, 98 (D.D.C. 1986), *aff'd,* 830 F.2d 1188 (D.C. Cir. 1987), the court observed:

> In order to establish that it is qualified for tax-exempt status, CGM has the burden of proving three elements contested by the IRS: (1) that CGM is a corporation operated primarily for religious and/or charitable purposes, 26 U.S.C. §§ 170(c)(2)(B), 501(c)(3); 26 C.F.R. § 1.501(c)(3)–1(c)(1); (2) that no part of CGM's net earnings inure to the benefit of any private shareholder or individual, 26 U.S.C. §§ 170(c)(2)(C), 501(c)(3); 26 C.F.R. § 1.501(c)(3)–1(c)(2), and (3) that CGM maintains records sufficient to demonstrate that it is entitled to tax-exempt status, 26 U.S.C. § 6001; 26 C.F.R. §§ 1.6000–1(c), 31.6001–1.

The Court went on to state: "***[t]he failure to present adequate records*** also ***prevented CGM from meeting its burden*** of showing that its operations were primarily for religious or charitable purposes and did not inure to the private benefit of its officers." *Id*. at 99 (emphasis added).

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[133] "An exemption is an exception to the norm of taxation. An organization which seeks to obtain tax-exempt status, therefore, bears a ***heavy burden to prove*** that it satisfies all the requirements of the exemption statute … An exemption must be strictly construed and any doubt must be resolved in favor of the taxing power." *Harding Hosp., Inc. v. United States*, 505 F.2d 1068, 1071 (6th Cir. 1974) (emphasis added). In *Harding Hosp., Inc.* the Court went on to state: "We find it impossible to conclude … that no part of (the Hospital's) net earnings inured to the benefit of a private individual … we hold that the Hospital was not entitled to tax exemption under § 501(c)(3) during the years in question." *See also Found. of Human Understanding v. United States,* 88 Fed.Ct. 203, 212 (2009) ("Courts have recognized that exemptions from tax are matters of 'legislative grace,' and, accordingly, the burden of establishing entitlement to an exemption is on the taxpayer."); *Smith v. Comm'r*, 800 F.2d 930, 934 (9th Cir.1986) (same); *Richardson v. Comm'r*, 509 F.3d 736, 742 (6th Cir. 2007) (same).

C. The years of deleting assets from EPA's records, with the resulting unreliability of EPA's records, render it impossible for EPA to prove the absence of private inurement.

As discussed above, EPA bears the burden to show that it is entitled to tax-exempt status as a 501(c)(3) organization, including the absence of private inurement. However, the years of deleting assets from EPA's accounting records have caused its records to become incomplete and unreliable—with the result it is now impossible for EPA to prove that it is tax exempt.

In addition to *Church of Gospel Ministry* (quoted above), many other cases support the point that an organization cannot carry its "heavy burden" to prove it is eligible for 501(c)(3) exemption ***unless it provides appropriate records showing the absence of private inurement***.[134]

In *Church of Scientology of California v. CIR*, 83 TC 381 (1984), the court found there was private inurement where the organization's "workpapers were not always prepared in accordance with generally accepted accounting principles." EPA's ***deletion of assets is in flagrant dereliction of even the most basic principles of generally accepted accounting principles.***[135]

Without adequate and accurate records, it is impossible for an organization to establish that "no part" of its net earnings inure to the benefit of private individuals—and thus it is impossible for it to establish eligibility for 501(c)(3) exemption. *See also* IRS Field Serv. Advisory, 1995 WL 1918519 (Mar. 1, 1995) ("In accordance with the statutory recordkeeping requirement, an organization must keep records adequate to determine the full nature of its operations and show that its net earnings do not inure in part to the benefit of private individuals … Without adequate records the organization cannot carry its burden that no part of the organization's net earnings inure to the benefit of private individuals."); *Tony & Susan Alamo Found. v. Comm'r*, 63 T.C.M. (CCH) 2422 (T.C. 1992) ("[P]roper record keeping … is essential for a taxpayer to carry its burden of proof in a revocation proceeding.)[136]

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[134] *See, e.g.*, *see also Parker v. Comm'r*, 365 F.2d 792, 799 (8th Cir. 1966) ("No evidence of any kind was produced explaining the withdrawals or indicating that [organization member] did not receive the benefit therefrom. Therefore, the assessment of these amounts was proper."); *Kenner v. Comm'r*, 318 F.2d 632, 634 (7th Cir. 1963) (finding organization "failed to carry their burden of proof" because "the evidence falls short of establishing that no part of the [charitable organization's] net earnings inured to the benefit of [private member]."); *Triune of Life Church, Inc. v. Comm'r*, 85 T.C. 45, 56 (1985), *aff'd*, 791 F.2d 922 (3d Cir. 1986), and *aff'd sub nom. Appeal of Triune of Life Church, Inc.*, 791 F.2d 922 (3d Cir. 1986) ("The administrative record is simply too sketchy to support the conclusion that petitioner has carried its burden of proving that no part of its net earnings inures to the benefit of any private individual."); *Freedom Church of Revelation v. United States*, 588 F. Supp. 693, 698 (D.D.C. 1984) (finding the "plaintiff has failed to carry its burden of establishing that its earnings did not inure to private individuals" because it failed to provide appropriate records relating to its "operation and finances."

[135] *See also Basic Unit Ministry of Alma Karl Schurig v. United States*, 511 F. Supp. 166, 168 (D.D.C. 1981), aff'd sub nom. *Basic Unit Ministry of Alma Karl Schurig v. Comm'r*, 670 F.2d 1210 (D.C. Cir. 1982) (finding taxpayer "has not shown that it operated for other than the private interest of its members, nor that its earnings do not inure to its members" because it "did not proffer sufficiently detailed evidence"); I.R.S. P.L.R. 202001022 (Jan. 3, 2020) ("[T]he Organization's failure to keep adequate records does not demonstrate that its operations did not inure to the private benefit of its officer and sustain its burden to show that it is qualified for federal tax exemption under § 501 (c)(3).").

[136] Many other cases recognize these same principles. "The failure of a party to produce relevant evidence within its possession or control gives rise to the presumption that, if produced, it would be unfavorable." *Church of Scientology of*

In light of the above, EPA's deletion of assets, allowing assets to "disappear," and the inevitable conclusion that there was private inurement, are fatal to its tax-exempt status – and an independent reason why EPA is not exempt.

VI. Conclusion

The "tone at the top" usually determines how an organization operates. EPA has a documented 22-year history of regular, consistent false statements and fraudulent filings with federal authorities, intended to conceal that EPA has never operated as a tax-exempt organization, and that EPA has been concealing large foreign accounts. Combined with strong evidence of private inurement including years of "disappearing assets" and no oversight or basic controls at the senior manager level, Mr. Nielsen has exposed that EPA has never been tax-exempt, and that by their deceptive actions EPA and those assisting it have facilitated a *Klein* conspiracy to defraud the IRS.

Tellingly, EPA's "admissions by conduct" after reviewing Mr. Nielsen's November 2019 *pro se* IRS submission in December 2019 prove this wrongdoing. Knowing that EPA was under scrutiny brought by Mr. Nielsen's original submission, EPA officials have now admitted having foreign accounts—***after falsely denying the existence of its foreign accounts for more than ten years***. In addition, immediately after reviewing Mr. Nielsen's *pro se* IRS submission in December 2019, EPA suddenly started filing Form 13F in EPA's own name—an admission by conduct that its 260+ SEC filings of Form 13F in other entities' names were fraudulent.

In short, EPA now has now admitted many of these fraudulent acts described above, which evidence criminal liability for EPA and the others involved for engaging in a *Klein* conspiracy to defraud the IRS by concealing that it was never entitled to exempt status. Also tellingly, in a "cover-up," EPA still ***continues to conceal information it is required to disclose to the IRS***, such as the locations of its finally-admitted foreign accounts, and the true value of its assets.

EPA and the other wrongdoers described above should be held responsible for engaging in the *Klein* conspiracy, for violating criminal statutes, and for repeated false statements to the IRS and the SEC for over two decades. They orchestrated EPA's years of violating federal tax laws, and masterminded EPA's concealment

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California v. Comm'r of Internal Revenue, 83 T.C. 381, 452 (1984), *aff'd sub nom., Church of Scientology of California v. Comm'r, 823 F.2d 1310 (9th Cir. 1987); see also Kile v. Comm'r, 739 F.2d 265, 269* n.5 (7th Cir. 1984) ("Courts can draw inferences adverse to a taxpayer seeking exempt status where the taxpayer fails to provide evidence concerning its operations, or where the evidence is vague or inconclusive."); *Family Tr. of Massachusetts, Inc. v. United States*, 892 F. Supp. 2d 149, 155–56 (D.D.C. 2012), aff'd, 722 F.3d 355 (D.C. Cir. 2013) (holding that because certain facts suggested impermissible private inurement and private benefit, the party seeking tax-exempt status needed to provide "open and candid disclosure of all [relevant] facts" and "[if] such disclosure is not made, the logical inference is that the facts, if disclosed, would show that [the party seeking exemption] fails to meet the requirements of section 501(c)(3)."); *David Muresan Sci. Research Found. v. Comm'r of Internal Revenue*, 115 T.C.M. (CCH) 1047 (T.C. 2018) (holding an organization seeking 501(c)(3) exemption must "openly and candidly disclose all the facts bearing upon the organization and its operations and finances so that the Court, should it uphold the claimed [tax] exemption, can be assured that it is not sanctioning an abuse of the revenue laws"). The presumption is stronger "where the party failing to produce the evidence has the burden of proof." *Church of Scientology of California v. Comm'r of Internal Revenue*, 83 T.C. 381, 452 (1984) (citing *Wichita Terminal Elevator Co. v. Commissioner*, 6 T.C. 1158, 1165 (1946), *affd*, 162 F.2d 513 (10th Cir. 1947)).

that included repeated false statements under oath. They still routinely flout the law and regards themselves as inviolable.

Had EPA properly disclosed to the IRS the true nature of its operations, it would have been evident to any reviewer of the facts that EPA was not tax-exempt, but was in fact a for-profit business, liable for billions in federal taxes. EPA has successfully masqueraded as a tax-exempt organization, and built a vast investment fund, without undertaking any charitable, religious, or educational activities.

Congressional oversight and enforcement action should be taken to recover the tax owed by EPA, in excess of $20 billion before penalties and interest, and to recover FBAR penalties, in excess of $2 billion. Even if treated as a private foundation, EPA owes $13 billion or more in taxes.

If these violations of law are ignored, this case will erode respect for the tax laws and criminal statutes among all U.S. taxpayers—encouraging fraudulent claims of exempt status and weakening tax administration within the tax-exempt sector generally, and by non-exempt religious organizations in particular.

In re: ENSIGN PEAK ADVISORS, INC.

EXHIBITS

EX. 1 EPA Articles of Incorporation

EX. 2 Form 990-T Filings by EPA with false statements re: assets, foreign accounts and income

- **2a**. – 2007 Form 990-T
- **2b**. – 2008 Form 990-T
- **2c**. – 2010 Form 990-T
- **2d**. – 2011 Form 990-T
- **2e**. – 2012 Form 990-T
- **2f**. – 2013 Form 990-T
- **2g**. – 2014 Form 990-T
- **2h**. – 2015 Form 990-T
- **2i**. – 2017 Form 990-T
- **2j**. – 2018 Form 990-T
- **2k** – 2019 Form 990-T

EX. 3 Examples of 260+ Fraudulent SEC Filings by EPA in the names of other entities it controlled

- **3a**. - 2017 SEC Form 13F filing in name of Argyll Research LLC
- **3b**. - 2017 SEC Form 13F filing in name of Ashmore Wealth Management LLC
- **3c**. - 2017 SEC Form 13F filing in name of Cortland Advisers LLC
- **3d**. - 2017 SEC Form 13F filing in name of Elkfork Partners LLC
- **3e**. - 2017 SEC Form 13F filing in name of Flinton Capital Management LLC
- **3f**. - 2017 SEC Form 13F filing in name of Glen Harbor Capital Management LLC
- **3g**. - 2017 SEC Form 13F filing in name of Green Valley Investors LLC
- **3h**. - 2017 SEC Form 13F filing in name of Meadow Creek Investment Management LLC
- **3i**. - 2017 SEC Form 13F filing in name of Neuburgh Advisers LLC
- **3j**. - 2017 SEC Form 13F filing in name of Riverhead Capital Management LLC
- **3k**.- 2017 SEC Form 13F filing in name of Tiverton Asset Management LLC
- **3l**. - 2017 SEC Form 13F filing in name of Tyers Asset Management LLC

EX. 4 SEC 13F Filings by EPA in its own name (which began only in 2020)

- **4a**. – Printout of all EPA filings from SEC EDGAR Database (as of late 2020)
- **4b**. – Feb. 2020 Form 13F Filing by EPA

EX. 5 *Wall Street Journal* Article 2/8/2020
The Mormon Church Amassed $100 Billion. It was the Best-Kept Secret in the Investment World.
(Ian Lovett and Rachael Levy, Updated Feb. 8, 2020)

EX. 6 Deseret News Article 6/16/2009
Beneficial Financial Group cuts 150 of its 214 Utah jobs (Jason Lee, Jun. 16, 2009)

EX. 7 2013 EPA internal presentation describing as "withdrawals" EPA's transfers totaling $2 billion to the insurance company Beneficial Life and the City Creek Mall.

- **7a**. – Excerpt: Internal presentation, "Framework & Exposures," March 2013
- **7b**. – Full presentation, March 2013

EX. 8 *The Salt Lake Tribune*, "*LDS Church discloses the $37.8 billion stock portfolio of its biggest investment fund,"* (Nate Carlisle, March 7, 2020.)

ATTACHMENTS

To provide additional factual details and legal analysis, Mr. Nielsen through counsel provides the following Attachments A through D to accompany this Memorandum.

ATTACHMENT A:

EPA'S Vast Business Enterprise and Investment Fund.

A. EPA has conducted a vast investment business enterprise.

Since its 1997 formation, EPA has operated solely as a vast securities investment business and investment fund. Its investments include a large number of portfolios made up of marketable securities.[137] Most of EPA's portfolios include listed equities, although some portfolios are composed of debt instruments, and yet others contain hybrid instruments with elements of equity and debt.

Most of EPA's securities are listed on a securities exchange in the United States. A number are listed on securities exchanges outside the US, in countries such as Brazil, Japan, China, United Kingdom, and possibly other countries.

For management purposes, EPA's portfolios are grouped into five separate "siloes." Each "silo" refers to the nature of the underlying securities, namely US Equity, International Equity, Private Equity, Credit Instruments, and Hybrid Instruments.[138] These portfolio structures are highly developed and have evolved over time.

B. EPA actively manages certain of its portfolios and rigorously controls all of its portfolios.

While EPA actively manages some of its portfolios in-house, external investment advisors manage other EPA portfolios. EPA's investment management and investment strategy are highly specific to each portfolio, both for those portfolios that are managed in-house and those that are externally managed, including separate mandates and separately managed accounts, with each profile having its own benchmark and corporate breakdown to the aggregate benchmark.

EPA controls the portfolios rigorously, by make-up and mix of underlying investments against asset allocation targets. Target values are established for each of the portfolios against benchmarked returns, benchmarked composition, and concentration limits, all measured monthly and reviewed annually in a formal review process.

Within each silo, the relative value of each portfolio as a function of the value of the silo is also targeted and monitored relative to actual values. This is managed and tweaked through an asset allocation framework by the asset allocation team.

C. EPA's investment management team.

EPA has achieved this high level of asset management and control through a large team of dedicated

[137] While the number of portfolios changes slightly over time, in 2018 EPA operated approximately 84 separate investment portfolios. Within these portfolios EPA literally holds thousands of line-items (approximately 9,000 line-items in US equities and 4,000 line-items in fixed-income securities), comprising millions of shares and billions in face value of bonds.

[138] A bar chart illustrating the siloes is set out below.

professional investment managers. When Mr. Nielsen left EPA, EPA employed approximately 75 individuals to manage the investments, of which approximately 40 are professional investment managers, and the remaining 35 supported this function. EPA's investment management team is carefully structured. Each silo had a team head, and the team heads reported to EPA's Chief Investment Officer.

EPA's investment managers are given investment goals, and their performance is formally evaluated relative to these goals. While specific goals vary by manager, all managers are expected to provide results that beat the market average for that type of investment,[139] while prioritizing the preservation of principal and while following investment guidelines (certain securities are restricted for various reasons, including ideological and reputational reasons).

D. EPA's business model is highly successful and allows EPA to compete successfully with Wall Street investment firms.

The success of EPA's investment business over the years has given rise to a huge, diversified investment fund, the value of which is currently estimated to be in excess of $100 billion.[140]

EPA's operational structure, securities investment business and resultant investment fund broadly resemble those of Goldman Sachs and other large, "bulge bracket" securities management firms.[141] In fact, EPA actively competes with investment firms and investment funds such as Goldman Sachs on a highly effective basis, especially in trading in both primary market issuance/allocations and secondary trades.[142] EPA, due to its sheer size and its decision not to generate and use its cash for charitable, religious, or educational purposes—and its failure to generate and pay cash for taxes—has competed successfully for coveted positions in some of the largest, most prestigious private equity funds in the world. EPA also undertakes co-investments with these very large private equity firms, investment bankers, and hedge funds that rival many of their other customers in terms of size.

EPA exploits an enormous—and unfair—competitive advantage over other investment firms by unlawfully avoiding paying taxes, for the reasons outlined in the footnote below.[143]

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[139] Market returns are regarded as "Beta." EPA's managers are expected to provide "Alpha" returns, meaning returns in excess of Beta.

[140] Mr. Nielsen estimated that EPA's fund had a value in excess of $81 billion in 2018. In 2020, EPA's then-President stated publicly it had a value of $100 billion.

[141] EPA's investment fund is broadly akin to funds managed by firms such as Blackrock, Bridgewater, and Fidelity.

[142] In addition to competing with the largest investment firms, EPA is sufficiently large to partner with some of the large investment firms like Goldman Sachs on investment positions.

[143] The most prestigious private equity firms limit the numbers of investors and create a scarcity of opportunity for investment firms. These private equity firms are discerning and highly selective, prioritizing firms who can write big checks and will not make withdrawals in difficult market conditions. EPA competes extremely well here. EPA can write—and has written—some of the largest private equity checks in history and has demonstrated in public statements and over time that it has not and will not liquidate these investments when market conditions turn. As a result, EPA has competed successfully and has received massive investment allocations in some of the most prestigious private equity funds in the world.

E. EPA's Investment Fund.

US Equity		Intl Equity / FX		Private Equity		Hybrid		Credit / Duration		Cash	
	35.1		9.7		5.1		7.6		21.3		2.4
USEQOL	(0.0)	INEQOL	(0.0)			AAD	-	FIOP	0.0		
CORE	16.1	WXUS	0.6	Buy Out	3.1	GBT	2.1	ITB	4.6	CASH_EPA	2.4
USV	3.0			Venture	1.5	GIB	0.6	M	3.4		
CP	2.3	LSVSMCAP	1.9	MPEC	0.3	AAF	0.5	LTB	3.0		
USM	2.3	LSVINTL	1.8	Growth	0.2	AMP	0.4	UST	2.9		
GP	2.0	SEG	0.8				3.6	STB	2.2		
SMID	1.3	BWEM	-					TIPS	2.1		
USEW	1.0	FI-INTLSC	0.7			BAWP	0.1		18.3		
LV	1.0	FI-INTL	0.6			PEFX	0.1				
INX	0.9	ARTI	0.5			PMO	0.2	EPHY	1.0		
FERP	0.6	WG-EM	0.5			EIG	0.2	EMD	0.7		
SC	0.3	WG-DM	0.4			AQRSPF	0.4	EPREL	0.7		
FESIV	0.2	GPIS	0.4			BAAP	0.8	LR	0.2		
FECOP	0.2	NIPUN	0.1			BAOP	0.6	SCASH	0.1		
FIDEA	0.2	AILGP	0.3			BAMM	0.2		2.5		
	31.4	LSVEMSCP	0.3			BRSA	0.3				
		AMICRO	-			EMO	0.1	DUPONT	0.1		
FI	1.9	AISGP	0.2			KEB	0.2	GLDP	0.1		
LSV	0.6	KABM	0.2			MARS	0.2	JPM	0.1		
MFG	0.6	OSAM	0.1			MSR	0.1	PACSFI	0.1		
THBM	0.3	LSVEMLC	0.1			M3P	-	CSP	0.0		
AV	0.2	KMCGP	0.1			PANA	0.1		0.5		
FILC	0.1	KSMID	0.1			SPM	0.2				
	3.7	ACADIAN	-			USLS	0.2	BAI	(0.0)		
			9.1				4.0				
US All Cap		International All Cap		Custom Small Cap		Roll-Up		Custom Fixed Income		T-Bills	
	35.1		9.7		5.1		7.6		21.3		2.4
Total Equity $49.9 billion						Total Hybrid & Credit / Dur $28.9 billion				Total Cash $2.4 billion	
Total EPA Assets $81.2 billion											

The make-up and value of EPA's investment fund in 2018 is summarized above. This summary was drafted by Mr. Nielsen in 2019 based on actual position-level detail and other risk and asset allocation reports in 2018.

As the summary depicts, EPA's investments comprise a large number of portfolios, with an aggregate value exceeding $80 billion in 2018. In compiling this summary, Mr. Nielsen extrapolated certain details, based on information that:

a) Was within his personal knowledge arising from his employment at EPA; and/or

b) Was contained in SEC Form 13F filings that were filed at the end of 2017 by 12 LLCs. Based on Mr. Nielsen's personal knowledge, these LLCs were 100% owned by EPA, and EPA used the LLCs as investment vehicles to obfuscate EPA's identity as the true owner and investor.

ATTACHMENT B:

Details of EPA'S *More Than 260 Fraudulent SEC Filings*—Which Were Acts in Furtherance of the *Klein* Conspiracy to Defeat the Lawful Functioning of the IRS.

As discussed in the accompanying Disclosure Memorandum, from 2007-2019, as part of EPA's efforts to evade tax by falsely portraying itself as tax-exempt, EPA made ***more than 260 fraudulent filings*** of SEC Form 13F in the names of other entities, rather than in its own name as required by law. These fraudulent filings helped conceal that EPA itself was operating a massive securities investment business. EPA's conduct—both before and after its fraudulent filings were revealed—is strong evidence of corrupt intent to violate its legal duties.

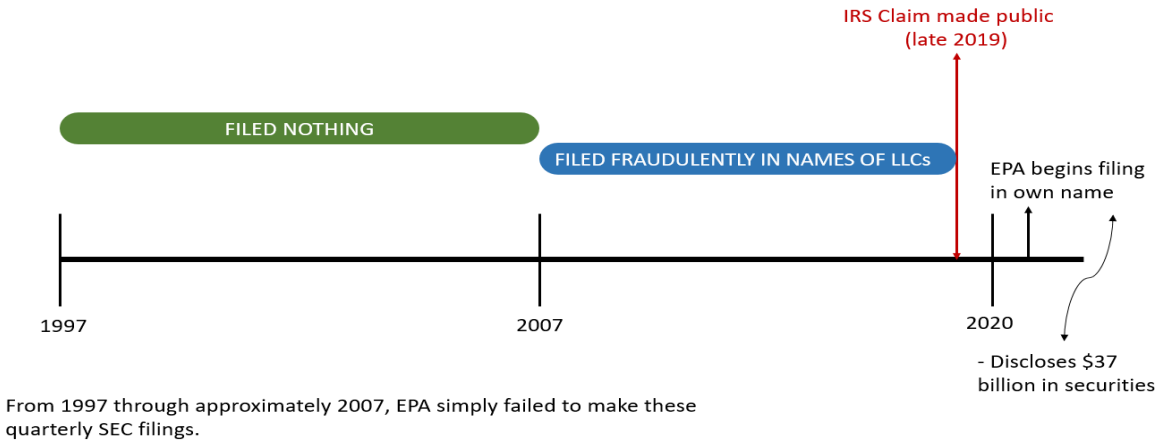
Here, Mr. Nielsen provides a detailed description of EPA's deception in those SEC filings—"hiding behind" various LLCs to conceal its massive securities investment business.

As noted, Section 13(f) of the Securities Exchange Act of 1934 requires an institutional investment manager with at least $100 million in assets under management to file SEC Form 13F. This requirement extends to an entity that invests in securities for its own account where it exercises investment discretion over securities valued at $100 million or more. EPA was the entity that exercised investment discretion over the securities in question.

Since its formation in 1997, EPA has invested in and exercised investment discretion over securities valued in the billions of dollars. As a result, EPA was required to file Form 13F quarterly in its own name, but failed to do so until 2020.

A. Timeline of EPA's fraudulent SEC filings.

The following timeline summarizes EPA's history of filing Form 13Fs. First, based on SEC records, EPA apparently made no Form 13F filings from 1997-2007, despite its obligation to do so. Next, in 2007, EPA fraudulently began filing Form 13F in the names of various LLCs that it controlled, rather than in its own name as required. Then suddenly, after learning of Mr. Nielsen's *pro se* IRS submission in December 2019, EPA abruptly stopped filing Form 13F in the names of these LLCs, and for the first time began filing Form 13F in its own name—as had always been required by law:



B. LLCs that EPA used to avoid filing in its own name.

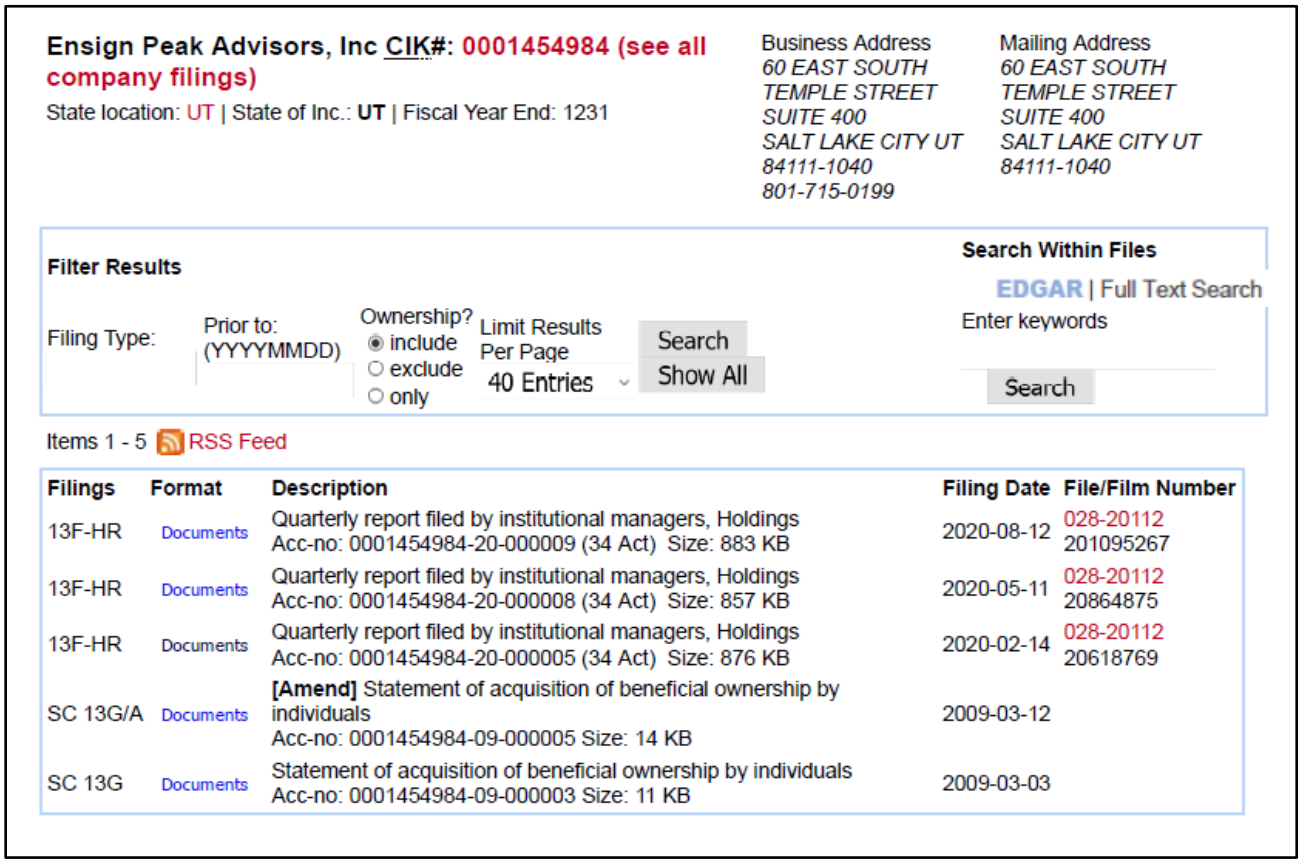
To illustrate, in 2017 EPA used the following 12 LLCs to make the required filings of Form 13F in the names of the LLCs:

a) Argyll Research, LLC;
b) Ashmore Wealth Management, LLC;
c) Cortland Advisors, LLC;
d) Elkfork Partners, LLC;
e) Flinton Capital Management, LLC;
f) Glen Harbor Capital Management, LLC;
g) Green Valley Investors, LLC;
h) Meadow Creek Investment Management, LLC;
i) Neuburgh Advisers, LLC;
j) Riverhead Capital Management, LLC;
k) Tiverton Asset Management, LLC;
l) Tyers Asset Management, LLC;

C. Documentation that EPA never filed form 13F in its own name until after receiving Mr. Nielsen's *pro se* IRS submission in December 2019.

In reality, EPA was the manager exercising investment discretion of the securities reported in these Form 13F filings by the 12 LLCs. When EPA learned of Mr. Nielsen's *pro se* IRS submission in December 2019, EPA knew that Mr. Nielsen had addressed these LLCs in his original IRS Whistleblower submission and that he has personal knowledge that EPA had investment discretion over these securities.

Examples of EPA's 260+ fraudulent Form 13F filings are included as Exhibit 3. As noted, the relevant excerpt of EPA's own SEC filing record as of late 2020 (Exhibit 4b) shows that EPA never filed Form 13F in its own name until early 2020—immediately after reviewing and reacting to Mr. Nielsen's *pro se* IRS submission in December 2019:



Ensign Peak Advisors, Inc CIK#: 0001454984 (see all company filings)

State location: UT | State of Inc.: **UT** | Fiscal Year End: 1231

Business Address
60 EAST SOUTH TEMPLE STREET SUITE 400 SALT LAKE CITY UT 84111-1040 801-715-0199

Mailing Address
60 EAST SOUTH TEMPLE STREET SUITE 400 SALT LAKE CITY UT 84111-1040

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Items 1 - 5 RSS Feed

Filings	Format	Description	Filing Date	File/Film Number
13F-HR	Documents	Quarterly report filed by institutional managers, Holdings Acc-no: 0001454984-20-000009 (34 Act) Size: 883 KB	2020-08-12	028-20112 201095267
13F-HR	Documents	Quarterly report filed by institutional managers, Holdings Acc-no: 0001454984-20-000008 (34 Act) Size: 857 KB	2020-05-11	028-20112 20864875
13F-HR	Documents	Quarterly report filed by institutional managers, Holdings Acc-no: 0001454984-20-000005 (34 Act) Size: 876 KB	2020-02-14	028-20112 20618769
SC 13G/A	Documents	**[Amend]** Statement of acquisition of beneficial ownership by individuals Acc-no: 0001454984-09-000005 Size: 14 KB	2009-03-12	
SC 13G	Documents	Statement of acquisition of beneficial ownership by individuals Acc-no: 0001454984-09-000003 Size: 11 KB	2009-03-03	

D. Analysis of the stocks involved further proves EPA's fraudulent filings.

Mr. Nielsen has performed an analysis that compared the stocks disclosed in the last filing by the LLCs in 2019—immediately before EPA reviewed Mr. Nielsen's *pro se* IRS submission in December 2019—with the first filing by EPA made in 2020 for Q4 of 2019. That analysis reveals that 97% of the stocks disclosed in the twelve LLCs' filings of Form 13F in September 2019 Form 13Fs were the same stocks as EPA disclosed in EPA's own name in its filing in early 2020 for Q4 of 2019.[144] Furthermore, these LLCs predictably stopped filing Form 13Fs when EPA filed its first Form 13F, for the period ended December 2019.

In short, the above records show EPA made no Form 13F filings ***in its own name*** before February 2020, when it apparently realized that its efforts to conceal EPA's massive business enterprise had been exposed, *after* Mr. Nielsen's submission became publicly known.

By 2019, these 260+ fraudulent filings concealed EPA's management and beneficial ownership of **$30+ billion** in US denominated, exchange-traded public equity securities.

In sum, an essential part of EPA's *Klein* conspiracy to defraud the IRS and pretend to be tax exempt was making these fraudulent SEC filings in other entities' names. Just as EPA's CIO acknowledged to Mr. Nielsen in 2018, EPA did so because of concern that revealing the truth—that EPA was the owner of a massive

[144] This is the result of Mr. Nielsen's personal knowledge and detailed analysis undertaken by Mr. Nielsen. A copy of the full analysis is available if required.

securities investment business—would "risk the firm" by causing EPA to lose its tax-exempt status. See Section II-H of Memorandum.

ATTACHMENT C:

If the Service Wishes to Treat EPA as a Private Foundation.

This Attachment C discusses treating EPA as a private foundation, as an alternative if the government wishes to resolve EPA's tax liability on that basis.

A. Factors that bring about private foundation status.

The Service has provided the following succinct practical definition of a private foundation:

> A private foundation is any … organization described in section 501(c)(3) of the Internal Revenue Code except for an organization referred to in section 509(a)(1), (2), (3), or (4).[145]

In light of this definition, even if the Service is reluctant to disallow 501(c)(3) status, the question whether EPA constitutes a private foundation depends upon whether EPA satisfies section 509(a)(1), (2), (3), or (4); in other words, if EPA fails to satisfy section 509(a)(1), (2), (3), and (4), it will then be seen as a private foundation.

As mentioned in the body of this Memorandum, EPA clearly doesn't satisfy the requirements of IRC § 509(a)(1), (2), and (4), and EPA also fails the requirements of IRC § 509(a)(3) essentially because it has not supported the Church (or any other public charity).

In light of the above, EPA has failed the requirements of section 509(a)(1), (2), (3), and (4), and as a result, EPA would constitute a private foundation (if one were to ignore the fact that EPA fails to satisfy IRC § 501(c)(3)).

B. Consequences of being regarded as a private foundation other than an operating foundation.

The primary consequences of EPA being seen as a private foundation are that EPA would then be subject to tax on net investment income, and EPA would also be subject to excise tax for failing to make distributions.

Significantly, the private foundation excise tax for failing to make distributions was introduced by Congress in 1969 specifically ***to prevent the exact type of abuse that EPA has undertaken***[146] – namely using tax-exempt status to help accumulate funds, while failing to distribute these funds for the intended charitable purpose.[147]

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[145] *See* https://www.irs.gov/charities-non-profits/charitable-organizations/public-charities.

[146] IRC § 4942 was enacted in 1969 to remedy the position whereby "[a] private foundation loses its exemption if its aggregate accumulated income is unreasonable in amount or duration for its charitable purposes." The solution was to pass legislation that "provides that a private foundation must distribute all its income currently (but not less than 5 percent of its investment assets) …." In part, this was because "[n]o private foundation should be permitted to use the tax laws to carve out a perpetual role in society without having to justify its continued existence to the contributing general public." See pages 13 and 14 of *Summary of H.R. 13270, The Tax Reform Act of 1969, prepared by the Joint Committee on Taxation and the Committee on Finance.*

[147] The tax for failure to make distributions is intended to prevent unwarranted accumulations of funds by the foundation. However, EPA's position is more extreme. By failing to use ***any*** of its funds for charitable purposes, EPA also fails the requirements of IRC 501(c)(3).

Also significantly, EPA does not qualify as an "operating foundation." As a result, EPA does not qualify for exemption from the tax on net investment income, and does not qualify for exemption from the tax for failing to make distributions.

In sum, even if EPA is treated as a private foundation, it would be subject to tax as such as outlined below.

C. Tax on net investment income.

IRC § 4940(a) provides for a tax of 2 percent[148] on the "net investment income" of "each private foundation which is exempt from taxation under section 501(a)." Organizations that fall under section 501(c)(3) are included as exempt from taxation under section 501(a).

"Net investment income" is defined in IRC § 4940(c)(1) as "the amount by which … the sum of the gross investment income and the capital gain net income exceeds … the deductions allowed …." And "gross investment income" is defined in IRC § 4940(c)(2) as "the gross amount of income from interest, dividends … ."

In light of the above, EPA's net investment income constitutes the net investment income that EPA earned each year, which over the period 1997 – 2018 is estimated to aggregate in excess of $32 billion, and on which the net investment income tax is estimated at $.65 billion before penalties. The model as well as the assumptions on which the model is based are detailed in Table B to Attachment D.

IRC § 4942(a) imposes an excise tax of 30% on the amount that a private foundation is required to distribute each year, if it fails to make the required distribution. The distribution that a private foundation is required to make is 5% of the excess of the market value of the foundation's assets over the acquisition indebtedness with respect to these assets.

On the basis that the market value of EPA's assets is at least $81 billion, and that EPA has no debt[149] (and therefore no acquisition indebtedness), EPA's 2018 required distribution is estimated at more than $4 billion ($81 billion x 5%), and the 2018 tax is estimated as exceeding $1.3 billion.[150]

The total tax on failure to distribute income over the period 1997 – 2018 is estimated to aggregate more than $12.5 billion, before penalties. The model as well as the assumptions on which the model is based are in Attachment D.

[148] Prior to 2020, the 2% tax rate reduced to 1% where the foundation made charitable distributions that were sizable relative to its assets and investment income. EPA made no such distributions, hence the 2% rate applies each year.

[149] In response to requests for credit information, EPA routinely responded with a standard form letter stating, "Ensign Peak is essentially without debt."

[150] This is after making allowance for EPA's 2018 tax on net investment income of $40 million. *See* Attachment D.

While EPA may be treated as a private foundation under the circumstances discussed above, for the reasons below it's clear that, under these circumstances, EPA would not qualify as an operating foundation.

D. EPA does not qualify for the exclusion from tax on undistributed income.

IRC § 4942(a)(1) provides that the tax on undistributed income shall not apply to an "operating foundation." The term "operating foundation" is defined in IRC § 4942(j). The definition contains a number of requirements, including a requirement that the organization makes distributions "directly for the active conduct of the activities … for which it is organized…."

The distributions enumerated are, in terms of the same provision, required to exceed certain significant threshold levels calculated with reference to the organization's net income and investment return.

As detailed above, at all relevant times, EPA never made any distributions for the purpose for which it was formed, let alone significant distributions as required under IRC § 4942(j). In light of this requirement alone, it's clear that EPA is not an "operating foundation" for purposes of the exclusion from tax referenced in IRC § 4942(a)(1).

E. EPA does not qualify for the exclusion from tax on net investment income.

IRC § 4940(1) provides that the net investment tax shall not apply to an "exempt operating foundation." The term "exempt operating foundation" is defined in IRC § 4940(2). The definition contains a number of requirements, including a requirement that the organization qualifies as an operating foundation under IRC 4942(j).

For the reasons outlined under D above, it's clear that EPA does not satisfy the requirements of an "operating foundation." For this reason alone, it's clear that EPA is not an "exempt operating foundation" for purposes of the exclusion from tax referenced in IRC § 4940(1).

i. Conclusion: If taxed as a private foundation, EPA is liable for tax on undistributed income as well as tax on net investment income.

For the reasons outlined above, it's clear that if EPA is to be taxed as a private foundation, it does not qualify as an operating foundation and so is subject to tax on undistributed income as well as tax on net investment income.

ii. EPA's total tax as a private foundation exceeds $13 billion.

In light of the above, EPA's total tax as a private foundation exceeds $13 billion ($12.5 billion plus $.65 billion).

The "model" from which these figures are derived is attached as Attachment D.

ATTACHMENT D:

EPA's Tax Payable and FBAR Penalties.

A. EPA's tax payable as a C corporation exceeds $20 billion.

Mr. Nielsen has quantified an estimate of EPA's tax liability as a C corporation based on his knowledge of the facts, and on certain assumptions referred to in the attached Table A. Table A provides a broad estimate of EPA's aggregate tax liability as a C corporation over the period 1997-2018. With a view to keeping the model straightforward, adjustments have not been made for known factors that apply to certain specific years.

For example, the model shows tithing as zero or negative in certain years, when in reality tithing was received in those years. This is with a view to retaining simplicity in the model. Mr. Nielsen can adjust the model to increase year on year accuracy, but doing so will entail complexity.

In light of the above, aspects of the model for a particular year may be imprecise, but overall the model is likely to be broadly correct both in direction and magnitude.

As appears from Table A, EPA's tax payable as a C corporation in 2018 is in excess of $1.2 billion, and over the period 1997 – 2018 is in excess of $20 billion.

B. EPA's tax payable as a private foundation exceeds $13 billion.

Mr. Nielsen has quantified an estimate of EPA's tax liability as a private foundation based on his knowledge of the facts, and on certain assumptions referred to in the attached Table B. Table B provides a broad estimate of EPA's aggregate tax liability as a private foundation over the period 1997 - 2018. With a view to keeping the model straightforward, adjustments have not been made for known factors that apply to certain specific years.

For the same reasons outlined above in relation to Table A, the model can be adjusted to increase year on year accuracy, but is likely to be broadly correct both in direction and magnitude.

As appears from Table B, EPA's tax payable as a private foundation in 2018 is in excess of $1.3 billion, and over the period 1997 – 2018 is in excess of $13 billion.

C. EPA's FBAR penalty for 2018 alone exceeds $2.2 billion.

Title 31 provides penalties for failing to disclose foreign financial accounts in FBARs. In the case of a willful violation, the maximum penalty is the greater of $100,000 or 50% of the unreported accounts.[151] Furthermore, the "reasonable cause" exception generally available for FBAR penalties does not apply in the case of a willful violation.[152]

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[151] 31 U.S.C. § 5321(a)(5)(C). In *Norman v. United States*, 942 F.3d 1111, 1118 (Fed. Cir. 2019), the U.S. Court of Appeals for the Federal Circuit held the maximum cap on the FBAR penalty contained in the regulations (31 C.F.R. § 1010.820(g) (renumbered in 2010) did not limit the 50% penalty provided in the statute. Furthermore, the Service has taken the position that "the statute is self-executing, and the new penalty ceilings apply." IRM 4.26.16.4.1.

[152] 31 U.S.C. § 5321(a)(5)(B)(ii).

The evidence strongly supports a finding of willfulness in EPA's failure to report its foreign accounts, given that EPA filed Form 990-T each year, the Form 990-T expressly notified EPA of the requirement to file FBARs, and EPA represented under oath each year that EPA did not have foreign account interests.

In addition, the fact that EPA's Form 990-T filings were signed by senior executives of EPA, who cannot plausibly be said to have lacked knowledge of the existence of EPA's foreign accounts, is further clear evidence that EPA's failure to file FBARs was willful.

On the basis that EPA's failure to file FBARs was willful, the maximum penalty for 2018 is 50% of the maximum value of the undisclosed accounts.[153] Knowing that EPA held foreign securities and had to report foreign accounts, EPA's willful failure should result in the maximum penalty for failing to report the securities accounts.

In light of above, EPA's FBAR penalty for 2018 alone is estimated at more than $4.5 billion.[154]

Even if only half of the maximum penalty were to be asserted, the 2018 penalty would then be more than $2.25 billion.[155]

[153] Theoretically, EPA is liable to a penalty for each year that it failed to file a FBAR. As a practical matter, the penalty is generally applied to the year with the largest value, and then "spread" over the years covered by the violations.

[154] This assumes that the value of the foreign portfolios on Attachment A reflects the maximum value for the year. While this is unlikely to be accurate, the year-end value is nonetheless a reasonable approximation of maximum value during the year. The 2018 value of EPA's foreign equities is estimated at $9.7 billion, most if not all of which were held in foreign accounts. The 2018 value of these foreign accounts was at least $9 billion, and $9 billion x 50% = $4.5 billion.

[155] This penalty estimate is conservative, given that EPA is likely liable for a willful penalty of 50% of the combined value of EPA's foreign stock portfolio accounts and EPA's foreign bank accounts.

TABLE A – TAX AS A C CORPORATION

Year	Total Asset Value (1) ($ billion)	Sale Proceeds (2) ($ billion)	Cost Basis (3) ($ billion)	Capital Gain ($ billion)	Dividends & Interest (4) ($ billion)	Tithing Receipt (5) ($ billion)	Total Income ($ billion)	Tax as a C corp (6) ($ billion)
1996	10							
1997	12	0.60	0.44	0.16	0.30	3.78	4.23	1.48
1998	14	0.70	0.52	0.18	0.35	0.63	1.16	0.41
1999	15	0.75	0.56	0.19	0.38	0.31	0.88	0.31
2000	17	0.85	0.63	0.22	0.43	0.63	1.28	0.45
2001	17	0.85	0.63	0.22	0.43	0.00	0.65	0.23
2002	17	0.85	0.63	0.22	0.43	0.00	0.65	0.23
2003	22	1.10	0.81	0.29	0.55	1.57	2.41	0.84
2004	26	1.30	0.96	0.34	0.65	1.26	2.25	0.79
2005	29	1.45	1.07	0.38	0.73	0.94	2.05	0.72
2006	33	1.65	1.22	0.43	0.83	1.26	2.51	0.88
2007	38	1.90	1.41	0.49	0.95	1.57	3.02	1.06
2008	29	1.45	1.07	0.38	0.73	-2.83	-1.73	-0.61
2009	35	1.75	1.30	0.45	0.88	1.89	3.22	1.13
2010	40	2.00	1.48	0.52	1.00	1.57	3.09	1.08
2011	41	2.05	1.52	0.53	1.03	0.31	1.87	0.65
2012	47	2.35	1.74	0.61	1.18	1.89	3.67	1.29
2013	52	2.60	1.93	0.67	1.30	1.57	3.55	1.24
2014	58	2.90	2.15	0.75	1.45	1.89	4.09	1.43
2015	65	3.25	2.41	0.84	1.63	2.20	4.67	1.63
2016	73	3.65	2.70	0.95	1.83	2.52	5.29	1.85
2017	81	4.05	3.00	1.05	2.03	2.52	5.59	1.96
2018	89	4.45	3.30	1.15	2.23	2.52	5.90	1.24
						28	60	20.27

(1) Values from 1997 - 2012 are accepted as correct internally by EPA. Values from 2013 to 2018 were derived by Mr. Nielsen based on details within his personal knowledge and on Form 13Fs filed by EPA subsidiaries in 2017.

(2) This assumes a churn rate of 5%, which Mr. Nielsen believes is reasonable based on his experience and knowledge of EPA investments.

(3) Mr. Nielsen estimates that basis in 2018 was likely $50 - $60 billion. In the interest of conservatism, 2018 basis has been assumed to be $60 billion, providing a basis to value ratio 60/81, which has been applied to all years.
(4) Mr. Nielsen estimates that dividends and interest averaged more than 2.5% by value each year. In the interests of conservatism, 2.5% has been applied to all years.
(5) EPA notified internally that tithing as a percentage of value over the period 1997 - 2012 was 3.4/10.8. This same ratio has been applied for all years.
(6) The tax rate for all years up to 2018 has been taken as 35%. For 2018 the tax rate is 21%.

TABLE B – TAX AS A PRIVATE FOUNDATION

Year	Total Asset Value (1) ($ billion)	Sale Proceeds (2) ($ billion)	Cost Basis (3) ($ billion)	Capital Gain ($ billion)	Dividends & Interest (4) ($ billion)	Net Inv Income (NII) ($ billion)	2% Tax on NII (NIIT) ($ billion)	Distr amount Value x 5%-NIIT ($ billion)	30% tax on distr as a Private Foundation ($ billion)	Total tax as a Private Foundation ($ billion)
1996	10									
1997	12	0.60	0.44	0.16	0.30	0.46	0.01	0.59	0.18	0.19
1998	14	0.70	0.52	0.18	0.35	0.53	0.01	0.69	0.21	0.22
1999	15	0.75	0.56	0.19	0.38	0.57	0.01	0.74	0.22	0.23
2000	17	0.85	0.63	0.22	0.43	0.65	0.01	0.84	0.25	0.26
2001	17	0.85	0.63	0.22	0.43	0.65	0.01	0.84	0.25	0.26
2002	17	0.85	0.63	0.22	0.43	0.65	0.01	0.84	0.25	0.26
2003	22	1.10	0.81	0.29	0.55	0.84	0.02	1.08	0.32	0.34
2004	26	1.30	0.96	0.34	0.65	0.99	0.02	1.28	0.38	0.40
2005	29	1.45	1.07	0.38	0.73	1.10	0.02	1.43	0.43	0.45
2006	33	1.65	1.22	0.43	0.83	1.25	0.03	1.62	0.49	0.51
2007	38	1.90	1.41	0.49	0.95	1.44	0.03	1.87	0.56	0.59
2008	29	1.45	1.07	0.38	0.73	1.10	0.02	1.43	0.43	0.45
2009	35	1.75	1.30	0.45	0.88	1.33	0.03	1.72	0.52	0.54
2010	40	2.00	1.48	0.52	1.00	1.52	0.03	1.97	0.59	0.62
2011	41	2.05	1.52	0.53	1.03	1.56	0.03	2.02	0.61	0.64
2012	47	2.35	1.74	0.61	1.18	1.78	0.04	2.31	0.69	0.73
2013	52	2.60	1.93	0.67	1.30	1.97	0.04	2.56	0.77	0.81
2014	58	2.90	2.15	0.75	1.45	2.20	0.04	2.86	0.86	0.90
2015	65	3.25	2.41	0.84	1.63	2.47	0.05	3.20	0.96	1.01

2016	73	3.65	2.70	0.95	1.83	2.77	0.06	3.59	1.08	1.13
2017	81	4.05	3.00	1.05	2.03	3.08	0.06	3.99	1.20	1.26
2018	89	4.45	3.30	1.15	2.23	3.38	0.07	4.38	1.31	1.38
						32	0.65	41.85	12.56	13.20

(1) Values from 1997 - 2012 are accepted as correct internally by EPA. Values from 2013 to 2018 were derived by Mr. Nielsen based on details within his personal knowledge and on Form 13Fs filed by EPA subsidiaries in 2017.
(2) This assumes a churn rate of 5%, which Mr. Nielsen believes is reasonable based on his experience and knowledge of EPA investments.
(3) Mr. Nielsen estimates that basis in 2018 was likely $50 - $60 billion. In the interest of conservatism, 2018 basis has been assumed to be $60 billion, providing a basis to value ratio 60/81, which has been applied to all years.
(4) Mr. Nielsen estimates that dividends and interest averaged more than 2.5% by value each year. In the interests of conservatism, 2.5% has been applied to all years.