

Taxes Stand Near the Top of Church-State Controversies

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As Americans fill out the federal income tax returns due April 15, church leaders and lawyers are trying to solve a column of problems related to religious tax exemption.



Tax matters have come to stand near the top of the list of church-state controversies. Basic federal and state non-profit exemptions of most religious organizations are not presently at issue. But gray area situations, the spread of new religious movements, political pressures, religious opposition to language in new tax laws, and the need of governments for greater revenues are producing an unprecedented number of court cases and hot debates on religion and taxation.

Behind the cases are fundamental legal and theological questions: such as the definition of "religion," the nature of religious freedom, the proper interaction of government and voluntary groups in the U.S., and the social implications of tax exemption. The current controversies and the debates they reflect engage, or affect, every segment of organized religion and are taking place on national, state and local levels. Some examples:

- The U.S. Supreme Court in its term opening October, 1981, had before it four cases dealing with the application of income, unemployment and social security taxes to par-

ticular religious institutions: last year it ruled in an unemployment tax case affecting religious schools.

- A case challenging the federal exemption of the Roman Catholic Church in the U.S. for opposition to abortion is before a federal district judge.

- Protestant churches in Minnesota, Michigan and New York have gone to court to protect the property exemptions of parsonages.

- Lutheran and Southern Baptist groups in several parts of the country are fighting what they argue are Internal Revenue Service efforts to use tax law to define certain ministries "out of the church."

- Young Life, the evangelical youth group, had to defend its status as a church-like organization in a California unemployment tax case.

- Fundamentalist congregations in California are facing possible loss of their property because they refuse to submit state-required exemption forms that they believe violate their free exercise of religion.

- Unsuccessful attempts were made last year in the Maine and Pennsylvania legislatures to impose or allow local governments to levy service charges on some religious institutions.

- The Unification Church of the Rev. Sun Myung Moon is in court in New York State attempting to win property exemption.

Such cases and controversies are fairly new on the U.S. church-state docket. A text on church-state relations published in 1936 contained no direct reference to "taxation" or "tax exemption", and there was no significant public discussion of religious exemption until the 1960s. To that point, the exemption of religion and other expressions of the non-profit world was non-controversial, a reality built into American society in colonial days.

Secular influences: assertive, sometimes unpopular religious campaigns; instances of tax fraud in religious guises and the bureaucratic tendencies of government have combined to make tax exemption an explosive issue today. So have laws, tax regulations and court rulings that raise within organized religion the fear of government intrusion. Tax-related issues formed at least one-third of the program at a February, 1981, national interreligious conference on governmental interference in religious affairs sponsored by Protestant, Catholic and Jewish organizations.

Controversies over religious tax exemption often involve other explosive public issues, such as racial integration or abortion. They can become heavily politicized. The most widely publicized recent religion-taxation case became a political test of the Reagan Administration's commitment to civil rights. This is the continuing litigation involving Bob Jones University of Greenville, S.C. and the Goldsboro Christian Schools of North Carolina.

The Jones and Goldsboro cases are extremely complex, the more so because of Executive Branch intervention last January. Each case began several years ago as an effort to determine whether the IRS has authority to deny tax exemption to religious schools practicing racial discrimination as a tenet of religious doctrine. Goldsboro Schools admit no blacks; Bob Jones University prohibits interracial dating and marriage. Such discrimination, said the IRS, disqualified the institutions from tax exemption because it violates "well-established" public policy favoring racial integration. The IRS prevailed in decisions from a circuit court of appeals.

Lawyers for the schools argued that the U.S. Tax Code does not stipulate adherence to well-defined public policy as a condition for tax exemption; the government, through the Justice Department, argued otherwise on the strength of judicial rulings by the Supreme Court last year. A number of religious groups, conservative and liberal, took the side of the schools in briefs to the High Court, primarily on the grounds that government has no power to specify the contents of religion. Other religious agencies opposed exemption for Bob Jones and Goldsboro, arguing that not even religious institutions should be allowed the benefit of exemption if they discriminate racially.

Before the Supreme Court could act, the Reagan Administration withdrew the Justice Department's opposition to tax exemption of all private schools practicing discrimination, a stand completely skewing the religious liberty issue central in the Bob Jones and Goldsboro cases. The administration concluded that the IRS indeed lacked legislative or judicial authority for an anti-discrimination policy developed throughout the 1970s. This conclusion was applauded by some constitutional authorities and hissed by others.

Pressured by civil rights forces, President Reagan asked Congress to outlaw tax exemption for both secular and religious schools that discriminate racially. Congress refused, primarily because the Democratic majority in the House of Representatives took the view that IRS already had such power. The whole matter was eventually returned to the courts, and there it remains.

Ethical disagreements over abortion figure in the case that has taken the U.S. Catholic Conference to court in defense of its exemption. A New York group called Abortions Rights Mobilization accused various parishes of violating a Tax Code prohibition against exempt organizations endorsing candidates for political office. It alleged that anti-abortion candidates had been endorsed or assisted with church

sanction. The U.S. Catholic Conference was drawn into the case because the Catholic Church in the United States has a group exemption, covering all its parts, as do most centralized Protestant denominations.

In response to the charges, the Catholic Conference contended in part that the Tax Code section restricting the political activities of exempt organizations is unconstitutional. The limitation, said the Catholic brief, hinders the free exercise of religion and the freedom of speech. Section 501 (c)(3) of the federal tax law confines political lobbying by exempt groups to "no substantial" part of activities and bans support for specific candidates. This section is considered unconstitutional by most of the nation's churches and other religious organizations, but few cases testing it have emerged. And few religious groups have lost exemptions under the political restrictions.

Large and small fights over religious property tax exemption — a state-level issue — arise today mainly from efforts to include as much property as possible on the tax rolls. No state or municipality is currently trying to tax houses of worship (except in a few instances involving so called "cults"), but many questions are being asked about properties used for housing, office space and social service ministries. States where such cases are most likely to arise include California, New York, Michigan, Minnesota and Texas.

Complicating the debate on religion and taxation are potential or real tax frauds perpetrated under religious mantles. For example, "mail order ministry" schemes are considered ineligible for exemption by IRS, and no religious group has come to the defense of such efforts to escape income or property taxes. Mail order churches are often set up by individuals or families on the strength of credentials purchased from enterprises such as the Universal Life Church or the Basic Bible Church.

The IRS routinely denies such exemptions when they come to its attention, and the Justice Department has within the last year successfully prosecuted several mail order ministers on charges of tax evasion.

The long-range implications of the present cases focused on religion and taxation are uncertain. Churches, synagogues and most religious schools are not apt to lose basic exemptions, but continuing, even expanding, controversy is certain. Tax exemption is, as one historian has said, an issue pressing both prongs of the "church-state stick."

Fr. John Reedy



Looking for the Lord

Bishop Imesch Lauded

A marriage was being planned in Kankakee, Ill. (Joliet diocese). The prospective groom, a Presbyterian, is paralyzed from the waist down. In his discussions with the parish priest, the man said that he was sexually impotent, a condition which he evidently regarded as permanent.

The priest, following the clear expression of Church law, told the man that impotence which is judged to be permanent is an impediment to Catholic marriage. Such a marriage could not take place in the Church.

The man was understandably angry; he went public with his anger, the publicity was followed by a lot of heated rhetoric and a number of attempts to explain Church law to people who saw this ruling as insensitive and cruel.

Then, in a surprisingly short time, the matter was resolved. Bishop Joseph Imesch, who had taken over the diocese just a year or so ago, took responsibility for the decision. He issued a statement which said:

"After consultation with a number of moral theologians, canonists and members of the medical profession, I see no reason why this couple cannot be free to marry in the church... I regret the pain and anguish they have suffered... I wish them God's blessing and a happy life together."

The couple, with a style that matched the bishop's, then said that they still hope to have their marriage witnessed by the priest who originally raised the issue.

Most of us would have little difficulty understanding why such a condition would invalidate a marriage if it were known and kept hidden from the partner until after the wedding.

But obviously this woman knew of her fiance's condition.

It's also obvious that the sexual giving of marriage partners to one another is a normal, natural part of married life. But contemporary theologians, I believe, would see this giving as the expression and fulfillment of the personal, permanent commitment of husband and wife to each other in married love.

That commitment is fundamental; the marriage act expresses and symbolizes it. This priority would have been reversed if this couple were not allowed to make their commitment because of the physical limitation.

Considering the difficulties they were willing to accept in their marriage, these two manifested a maturity, generosity and love which we would like to see in more of the marriages which are celebrated in the Church.

Had they been left with the judgment that the Church could not witness and bless their commitment to each other, I, for one, would have had a hard time finding the love and compassion of Jesus in this act of his Church.

Bishop Imesch will encounter questions and criticisms regarding his decision. I suspect he might even receive a tactful inquiry or two from Rome.

But he acted like a bishop — like a pastor of a local Church. He has my respect, admiration and gratitude.

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