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Panel Discussion on Unrelated Business Income Tax

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PANEL DISCUSSION ON UNRELATED BUSINESS INCOME TAX

ROBERT M. SPEVACK, ESQUIRE
CHARLES M. WHELAN, S.J.
GEORGE E. REED, ESQUIRE

WHELAN:

One of the big problems in dealing with IRS has been the complete reorganization of the exempt organizations branch. And, for those of you who are not familiar with this, I just want to take a couple of minutes to explain.

In the 1969 Act, Congress provided a four percent tax on investment income of private foundations, and this was to generate revenue for increased policing and surveillance in the exempt organizations area. And Congress exacted a promise from IRS and the Treasury that they would intensify their enforcing efforts in the exempt organizations field. In both of the meetings that I have had with IRS officials about unrelated business income tax, I have made the point that all this paperwork is putting a tremendous burden on the monastic organizations and that they did not join the Cistercians in order to fill out Form 990T. But the answer has been "Well, we're sorry, but we're not really sorry, because we've got to have the information. We simply must compile a great deal of data about the exempt organizations and now the churches and business operations, because we've been told to do that by Congress." Now, because of the new pension legislation, we have, at present, a new level in the Internal Revenue bureaucracy. There's an assistant commissioner for employee pensions and exempt organizations.

QUESTION:

You mentioned earlier, Father, that you were preparing requests for rulings from IRS with respect to the business operations of the Trappists. Wouldn't it be better to sit back and wait for the IRS to raise these questions rather than initiate the process yourself?

WHELAN:

I think that reasonable men, as Archbishop Jadot said this morning, will often disagree on highly complex questions, and I have been giving

very serious thought to the matter you raise. But the problems that the monastic orders in this country and the religious orders face in the tax area are not going to go away. Relatedness and compensation are not questions that we can put up on the shelf and hope they will not be asked by somebody else. The questions are going to be asked, and the questions are going to be answered. Our question is when do we want the answers.

I can see why some people would say that it's better to sit still and let IRS come chasing you. Don't raise these matters with them. I think that for ordinary businesses that's pretty sound advice. But I must say that one factor that weighed very heavily in my judgment is that I don't think waiting to be chased is good advice for Church organizations. I would be very distressed if I saw Church organizations playing the same kind of games with IRS that businessmen play. I think that approaching IRS directly on these matters and discussing these questions very openly with them and seeking to utilize the ordinary ruling procedures is a preferable mode of behavior by Church organizations.

But, again, as the Archbishop said this morning, let no man claim the authority of the Church for his views on matters like this. There are bound to be reasonable disagreements by reasonable men.

QUESTION:

My question during the break is whether to file the 990T or not. There seems to be some disagreement, anyway, and I was wondering is there going to be any general recommendation from the authorities of the Church, or however you want to put it, on what we should all do. I would imagine we would be better off to all do the same thing, and not to have some file it and some not. I know there are some differences on whether you should file it on exempt and some other types.

REED:

I don't know if all the members of the panel will fully agree with this, but, to the extent that we have reflected on the problem—we feel that, if you have a situation that comes within a very specific modification—such as section 512 has a very specific modification, it is not necessary to file a Form 990T; for example, the rental of real property, without any complication of rental of a debt-financing, without any complication of renting to a controlled corporation or the involvement of personal property. In those particular situations, it would not be necessary to file a Form 990T. On the other hand, if you have situations involving advertising, with an advertising income in excess of \$1000 and you have to apply a complicated accounting formula, very definitely we think that you should file. Also, if you're not sure whether you have an unrelated business or not, considera-

tion should be given to a request for a ruling. But we would appreciate it if you would first consult with us. If there is no serious doubt, then Form 990T should be filed, otherwise you will incur penalties and interest.

A. LEON HEBERT, DIOCESE OF BATON ROUGE:

My question to Father Whelan: Father, you've indicated that this is a brand new step in the bureaucracy of IRS—the group assigned to handle exempt organizations. My question relates to whether or not these returns, when filed, will be assigned to the ordinary agents in the field or whether there will be a special group of agents to whom these returns will be assigned.

WHELAN:

Of the many IRS districts in this country, there are 17 that have been selected as centers for exempt organizations. My understanding is that all of these returns will be processed through those 17 centers, and that's the way it's going to be done. You have to make the return to your local District Director, but it would seem to be the plan that there will be some centralization of auditing in this matter, and I'm hoping that will be. In trying to get those conferences with IRS, I made a point that the monasteries were located in 11 different districts in the United States and that, if we had to go through all these questions with each District Director, it was going to be even more complicated than trying to deal with people in the National Office.

HEBERT:

I'm not so much concerned with the monasteries as I am with the Diocese. It seems to me that it would be, if under present statistical information, that only one return out of twenty is being audited, you add the burden of the many parishes within the Diocese who might have filed a 990T, whether or not we're going to be concerned with somebody being in the Chancery office and in the parish office—how long and to what extent we'll be concerned with putting up with the revenue agents running around—even though you have the 30-day notice provision.

WHELAN:

I think that we have to anticipate that there will be extensive auditing in this matter until IRS gets some of the basic questions sorted out for itself. As you well know, in this process, first of all, IRS has to make up its mind what its position is going to be, and they don't know. In these conferences, IRS doesn't say that this is the way it is. What they say is

that we would like you to request a ruling so we can make up our minds—it will help us to make up our mind.

HEBERT:

We still don't know whether it will be an ordinary agent or a special agent?

WHELAN:

We do not know.

BOB ROBINSON, ARCHDIOCESE OF PORTLAND, MAINE:

I have two questions. The first question is this: We have a line of credit with the bank on which we can draw from time to time to meet operating needs—general operating needs—no portion of this debt is assignable to any specific class or type of property. My question is: Does the very existence of an outstanding balance in any way make us subject to the tax on interest, dividends, rentals, and so forth?

WHELAN:

Well, I think that's a question on which we ought to solicit the answers of other members of the panel, after I give you my answer . . . my answer is, I don't know. And, I don't think IRS knows either.

SPEVACK:

I think the answer to that kind of question depends on looking at the statute, namely, would the property not be acquired but for the indebtedness being incurred? We get into this with taxes, exempt bonds and interest. In other words, if one independently, or at least we hope, were borrowing money on the one hand, and on the other hand were buying up property, would we have bought this extra property except for the \$10,000 we borrowed? Now, on a line of credit, you haven't borrowed against it, so I don't see how that could raise any question at all. But, I assume that you mean this is where we've used at least a portion of the line of credit.

ROBINSON:

That's right, and there is an outstanding balance at this time.

SPEVACK:

The regulations have a very complicated example of unlimited debt-financed income involving selling the property and getting the interest on that and then buying other property so that the interest income is unre-

lated debt-financed income. The organization wouldn't have had the mortgage on the property we sold and got interest on that, except for the fact that it used other money to go out and buy new property—it's a very involved thing—but I think I'd be pretty safe in predicting that, unless you feel confident that tracing would be possible . . . in other words, you've borrowed \$100,000 and simultaneously, we didn't have any other funds, we spent the \$100,000 on a piece of property from which we're deriving income—unless you think it's close to that, I'd ignore it. Just another tracing-allocation problem.

ROBINSON:

Rental income, dividend income, interest income, are all exposed, as I understand it, if that income is, in effect, debt-financed.

SPEVACK:

We run into that, as I said, with tax-exempt interest, and the statute prohibits you from getting a deduction for interest on money you borrowed to buy tax exempts. Well, in that simple a case, nobody would have any quarrel. We would borrow \$10,000 and use the same sum just to buy tax-exempt bonds and use the interest deduction. But, they've gotten a little bit broader on that. There's been a lot of litigation. Well, suppose I had a mortgage on my house and I went out and bought tax exempts, would I lose the deduction from the interest on the house—generally, the answer would be no. On the other hand, assume that we have general lines of credit where the tax exempt organizations have to borrow money to carry on the business of some other unrelated activity. I would say, in general, that the IRS may be a little unhappy about this situation. I would say that generally the courts require some fairly close linking between the fact of the borrowing and the acquisition of the property. I think your case sounds like they would probably be far enough apart and, at worst, I would say that it is doubtful.

ROBINSON:

Who is the taxpayer entity? Is the Diocese the taxpaying entity, or are individual parishes? Should the individual parishes file the tax return?

WHELAN:

That question came up in a meeting in June that was called by the General Counsel of IRS. He's still the General Counsel, by the way. A number of the people who were in the Exempt Organizations Branch are still there. It's not as if they just cleaned house, totally, but many existing

personnel are being reassigned to different levels of responsibility, and new people are being brought in.

Incidentally, Mr. Whitaker, the General Counsel, was very interested in section 6033, which, as you know, relates to filing requirements. "Integrated auxiliaries" of Churches don't have to file basic Form 990. They would if they had unrelated business income, but they don't have to submit the basic return for exempt organizations.

So the question is what is an "integrated auxiliary?" IRS called together representatives of the Catholic Church, a number of Protestant Churches and Jewish organizations to try to find out from them what they thought an integrated auxiliary was. In the course of that discussion, the question came up how much separation we have to have before you've got a separate taxpayer—a separate taxable entity. IRS had no express position to take. I think they couldn't express it, because they said they didn't have it at that time.

My own recommendation is that, if your parishes are separately incorporated, you treat each one as a separate tax entity. Separate incorporation doesn't take them out of the Church, but I think it's sufficient to confer separate taxpayer identity. If you have a corporation sole, so that you don't have your parishes separately incorporated, then I think you've got one taxpayer, one taxable entity.

ROBINSON:

In our case, we have about 10 parishes that are separately incorporated and 110 that are not. Are you saying that they can and should file separate returns, in your opinion?

WHELAN:

Yes, if they have unrelated business income, they should.

FITZGERALD, ARCHDIOCESE OF MIAMI:

I'm just going to extend Father's remarks, by agreeing with him that if the parishes are separately incorporated, they well could be independently taxable. On the other hand, if it is a corporation sole, whether it's by operation of the statute, as it is in most places, or by operation of the common law, as it is in Florida, and Missouri also, I think that the taxable entity then would be the Bishop of the Diocese.

We've had occasions, for instance in Florida, where wills named St. Mary's Church or some other parish church as the beneficiary. Well, there is no such legal entity. None of our parishes are incorporated, and the title examiners have taken the position that, there being no legal entity of St.

Mary's Church, it would require a suit to quiet title, and actually get the title into the Bishop who would be the corporation. So, I think that merely by extending your remarks, I conclude in agreement.

EVELIUS, ARCHDIOCESE OF BALTIMORE:

In that regard, when the legacy goes to St. Mary's Church, unincorporated, and the only entity in the Diocese to hold property is the Ordinary, we've never had any trouble. We just use a few "whereases" in the deed. We say, "Whereas, the customary manner of holding Church property in the Archdiocese is to hold it in the name of the Archbishop, and whereas the present Archbishop is so-and-so, and whereas, this property is located in the Diocese," and we can convey it that way, the proceeds can be used for the benefits of St. Mary's Church, and it is always approved.

BILL HOTZ, ARCHDIOCESE OF OMAHA:

I've become so interested in the questions and answers that I've almost forgotten my question.

This relates to advertising. Is the structure, Mr. Spevack, of the provisions of the Code as they relate to unrelated business income—does that apply to a publication, one publication, that is put out once a year by the religious order where the advertising in a single publication is sold?

SPEVACK:

Of course, there's nothing that explicit, describing what happens to one annual religious publication. The controlling statutory term would involve whether the business is regularly carried on. Now, according to the regulations, and I suppose it's pretty much pragmatic and common sense, you'd have to compare your publication with taxable-type publications of a similar type in determining whether once a year conceivably could be frequent enough. I would say, in the ordinary case, I would tend to be doubtful. I think I mentioned the case of the yearbook, a publication which they held to be regularly carried on, and that was on the basis of the publication's coming out only once a year—and that wouldn't seem to be regular—that the solicitation of the advertising in the publication did take place over a substantial part of the year—production, presumably editorial work, all the work involved—presumably took most of the year, so that it might be that, on that basis, the IRS would say, even an annual publication is regularly carried on, even though there are no taxable annuals, let's just say for discussion's sake, that actually you're going on with this all year long. That ruling raises some serious implications in this area. My opinions on this are very skeptical, and you could possibly succeed, but I'm just pointing out there is a danger. They okay once a year, but you're doing

work over the entire year. They do have a precedent in this area on trade associations, which have had most of their problems, on these trade shows which are sold and carried no more than once a year and yet it is obvious that there is a lot of preparation and readying space, and getting in exhibitors and arranging the programs, and they haven't had any trouble in determining those are regularly carried on. So I don't know if they'd have much trouble with an annual Diocesan publication.

MONSIGNOR CHARLES GRAHMANN, PAST PRESIDENT OF NATIONAL CATHOLIC CEMETERY CONFERENCE, SAN ANTONIO, TEXAS:

Over the past years, we've had some lively arguments about the cemeteries on a Diocesan level or a parochial level. In the last half year, there have been a number of cemeteries on the Diocesan level which have simply opened up their sales to just anybody, not strictly for Catholics or those related in some way to a Catholic family, and have simply gone out and sold crypts and the right to burial to all kinds of people with no kinds of restrictions, and that has become a source of money for the Conference, and I wonder whether someone would maybe give us an answer on that. Is that, then, involving the Diocese in unrelated trade or business? Does the Diocese have to pay income tax on that or can that income be divided up and the burial of Catholics be restricted and not paid for? And, then, pay a tax on those who are not Catholics. Also, I wonder whether this would subject cemeteries, then, to the income and property taxes on a local level? We asked Mr. Nolan this morning privately, and he said he wouldn't adopt a policy like that at all, because that would subject the people to do this. But I'm wondering what the feeling is, because we've noticed in the last six months that quite a number of Dioceses have simply thrown open their cemeteries and have a policy of just simply selling to anybody who comes to them and also go out and sell to them on a premium basis.

REED:

Father, I'll start out the answer process on this—I'm sure others on the panel will like to make a few remarks on this, too.

In 1969, when the Tax Reform Act was adopted, we did get into the Senate report language to which reference has been made today, indicating that cemeteries would not be considered to be unrelated business activity. Now, I'm confident that, when that language was incorporated, it was incorporated with the idea of the normal way in which the nonprofit cemetery is operated, and furthermore, in light of several rulings by IRS and also under unemployment compensation—in all those rulings, they emphasize the fact that the burials are a Christian or a religious procedure, it's a religious service, and some of them emphasize that it is limited to

members of a particular Church. I've seen several rulings to that effect. Well, frankly, I think that the procedure to which you make reference is foreign to the idea that we had in mind and which Congress had in mind at the time that the Senate adopted that language.

PAST PRESIDENT OF NCCC, SAN ANTONIO, TEXAS:

So, what you're saying, then, is that we're endangering our position by opening up cemeteries to everyone.

REED:

I think so.

SPEVACK:

Religious cemeteries, which, as George pointed out, are considered to be such where the lots are sold or disposed of mainly to people involved with the Church, come under section 501(c)(3). There is, however, another statutory provision for exemption for nonprofit cemeteries, section 501(c)(13). I was thinking perhaps that, and, there, lot sales to anybody are permitted, on a nonsectarian basis, however you like. Thus, if you run this on a nonprofit basis, and conceivably incorporate the cemetery and qualify for tax exemption under section 501(c)(13), that might work.

WHELAN:

There were two recent cases in the tax court involving the Rockefeller family cemetery and the DuPont family cemetery, both of which were held to qualify as 501(c)(13) exempt organizations. In these cases, you have the opposite extreme—you have limitation to a particular family, and yet that met the exemption test. The whole argument that IRS used was those cemeteries were not open to the general public and, therefore, they couldn't meet 501(c)(13) and the tax court said nothing doing (and by a substantial majority). Always remember that, in analyzing unrelated business problems, you have to ask yourself what is the exempt function, and the exempt function of a cemetery organization is to provide burial places for people, not necessarily for Catholics or for Jews. Now, I agree completely with what George said, that the Senate report was thinking about the typical Catholic or Protestant religious cemetery. But, as Mr. Spevack said, there is 501(c)(13) and I think there is a way to avoid any unrelated business income problem in this particular area. Also, by the way, if you have any extra space that you can't get rid of, don't sell it to pets, because that has been held to be noncemetery and it has also been held to be unrelated business.

There was a case about three or four weeks ago in which a particular

arrangement between the landowners and the sellers to the cemetery and the cemetery corporation was held to violate the no inurement rule. That's a problem you have to watch out for in setting up the cemetery arrangements.

PAST PRESIDENT OF NCCC, SAN ANTONIO, TEXAS:

I received a copy of I think it was a digest, of the opinion of the National Labor Relations Board, where the Board took the position that, because of the character involved, I think it was one of our own cemeteries in Pennsylvania, if I'm not mistaken, they said it was part of our religious heritage and tradition and so involved with the Catholic burial and so on, but it was not among that group of institutions that would be subject to the rulings of the NLRB; therefore, they excepted cemeteries.

EUGENE KRASICKY, GENERAL COUNSEL:

I'd like to make a comment, if I may. I haven't met many of you, but I'm going to be before we're finished. In regard to Mr. Spevack's suggestion about 501(c)(13), most of you that might be tempted to go down that route should keep in mind how important it is for all our institutions to be 501(c)(3) and within the Official Catholic Directory. So, before you embark on something like that, please check with us.

SERRITELLA, ARCHDIOCESE OF CHICAGO:

There are three NLRB cases involving cemeteries. One is a Presbyterian case out of Los Angeles, and there they said it was not exempt from jurisdiction because it was open to the general public.

There are two Catholic cases. One from Los Angeles and one from Erie, and there they are exempt from jurisdiction because they do not admit members of the general public. If you want to escape that kind of jurisdiction it appears that limitations must be placed upon burial.

JIM FLYNN, EVANSVILLE, INDIANA:

I'm interested in pursuing the entity concept a little more. For instance, I can see positive benefits to the Diocese of Evansville to have its many different entities under the applicable statutes of the Code, and it's possible from the standpoint if there is an audit, we can limit the scope of their examination to the activities of the smallest entity possible. Yet, I can also see a dilemma in this approach from the standpoint of, when we walk into a conference, if the more entities there are, the more danger of the IRS throwing a whole bunch of precedents at you in hundreds of other cases involving hundreds of other entities, so, whereas I'm inclined to

approach this from the multientity approach, I am also aware of the need for uniformity of the treatment of these various problems, and I would hope that I could look to the United States Catholic Conference for assistance in this area.

REED:

We definitely hope to give as much assistance as possible in this area. I think you should look on the United States Catholic Conference in one respect as a clearing house. If we have the advantage of all those rulings—all of the private rulings, as well as the public rulings—then we can determine the trend. We can also relate to you the attitude—the current attitude—of IRS with respect to these problems. So, definitely, you will have the support of the General Counsel's office. We hope to gather as much information as possible, as much technical information, and to distribute it regularly. But, I think, also, you must at this time resolve to send in your problems, send in your rulings; otherwise, we won't know precisely what the trend is in the 17 major exempt organizational districts which are going to be reviewing the activities of exempt organizations.

FATHER MAIDA, DIOCESE OF PITTSBURGH:

Father Whelan and I are both reasonable men, and we both reasonably differ on issues from time to time. I don't know that I really differ, but I'd just like to point out a caveat on the recommendation that, where you have separate parishes which are incorporated in a Diocese, those separate parish corporations should file separately. I have real problems with that because I think it's in conflict to the canon law of the Church, the fundamental government of the Church. That is, in every Diocese, there is one administrator of the corporation of that Diocese. Parishes may have their own legal identity in civil law, but in the canon law they're responsible to the Bishop and to the Holy See for the administration of their property. I think we create a weak link for ourselves in the civil forum when we isolate these parishes out from the jurisdiction of the Bishop and give them an identity they don't have in canon law. Where canonical realities can be reflected in the civil law, they ought to be. Where possible, we should reinforce what is the Law of the Church in our civil forum. Therefore, to the extent this is possible and we have options, we should use options which reflect canonical reality in our civil law. I just throw that out as a gut reaction. I don't know that I really disagree with you, Charlie, but there it is.

WHELAN:

To the extent that consolidated returns are available as an option, I

certainly would favor their use myself, because one of the most important things that we have to do is to keep IRS in touch with the realities of Roman Catholic existence and Roman Catholic structure. The reason, however, that I think it may prove advantageous in some cases to go with the individual taxpayer entity concept is that it will help to limit the examination of our books. If we say to IRS that we are one, we also give IRS a basis for saying "Let's look at the whole business, the whole operation." So that's one problem that has to be reckoned with and has already been pointed out.

The second point I think that needs to be made is the one that you made very well in your book, Adam, *Ownership, Control and Sponsorship of Catholic Institutions*. The fundamental legal problem of the Church is that we are living under two systems of law all the time. It is our task as attorneys for the Church to try to harmonize these two systems in the interest of the freedom of the Church, but we must not make the mistake of forgetting that we are operating under two different legal systems all the time. There is never a moment or a day or a week or a year when we do not have to keep in our mind two different systems of law. And the result in the tax area may well be that we will have definitions of taxpayer entities by the government which will be somewhat at variance with our canonical and ecclesiological concepts of unity. When we run into that sort of situation, I think that the best thing is not to argue that IRS should pay no attention to our corporate forms of existence whatsoever. Each corporation is a separate taxpayer—that is IRS's basic position and has been for years and years and years. Each one has to file. Well, all right, we should say, but let's make it clear that these institutions are not isolated from each other, that they are part of a common pattern.

In the *America* magazine property tax case (now in its third year and probably going to go on for two more years), the corporation counsel's office in the city of New York has been arguing that *America* magazine is not a Roman Catholic or a Jesuit publication for two reasons: The first reason is that we are separately incorporated. We briefed that whole question in the trial court and the trial judge said that separate incorporation didn't make any difference so far as our Catholic and Jesuit identity was concerned.

The corporation counsel's second reason was also rejected by the trial judge—and some of my Catholic friends think that this time the judge was wrong. The second reason was that what *America* says has nothing to do with Roman Catholic doctrine.

QUESTIONS:

Father, whether or not the parish were incorporated, if several or each parish had federal employer identification numbers for which they were

currently reporting payroll taxes, wouldn't the IRS look at each of those as a separate entity?

WHELAN:

Not necessarily. We had an opportunity to check this question out a little earlier. For example, if there were a number of parishes that had unrelated business activities and if the Diocese itself files a consolidated return, the Diocese may claim the \$1000 exemption for each parish. The regulations deal with that specifically, by way of example.

QUESTIONS:

That was my question. Can the Diocese claim, for instance, if there are 50 parishes and the Diocese filed for the whole, can the Diocese claim \$50,000 as an exemption?

WHELAN:

We must be precise. The exemption for each parish is the *lower* of \$1000 or the total unrelated business taxable income. If the Diocese files a consolidated return, the Diocese can claim all the available exemptions.

TOM RAYER, NEW ORLEANS:

George, I want to address a question with respect to Diocesan newspapers, and perhaps it touches on something that Father Whelan said, as well as Mr. Spevack. As I understand it, most of the concern at this point is centered around the receipt of advertising revenue from the sale of commercial advertising, which is, of itself, unrelated business. But, what I'm concerned about is the operation of the paper itself with respect to the relatedness to the objects and purposes of the Diocese. My question specifically would be, do you gentlemen feel that the IRS is going to look at a Diocesan paper and, either from a quantity or quality standpoint, determine at some point that the content of that paper ceases to have sufficient religious content so as to make it a secular publication—that is, are the feature articles, the news articles, etc., cumulatively at some point, 50 percent more or less, going to make this no longer related to the business of the Church?

REED:

I really don't think so, and I think that is one of the functions of the unrelated business tax. You pay a tax on your unrelated business activities. Of course, now, a related question did come up to John Nolan today, in which he indicated that if the whole character of the operation has

changed, there would be some question as to whether you would lose your 501(c)(3) status. As long as the basic character of a Church newspaper is maintained, I think you're all right though net advertising income will be subject to the unrelated business tax.

SPEVACK:

Going basically on the examples that George gave me, I would say that the idea of religion related to religiousness is very broad. I didn't see anything in any of these that I think anybody would seriously argue was not religiously related. The only thing that potentially could create a problem in my mind is that some of the publications have started getting heavily into what the IRS might regard as legislative activities or political activities. I think that's the only practical problem and the only one we would have to worry about.

QUESTION:

I want to direct a question rather than an answer to Father Whelan. The whole idea of incorporating individual parishes, schools, whatever the case may be. I used to think for a while it might be well to incorporate the schools separately to show them that they are not in fact part of the Church complex and therefore entitled to tax relief. But, I wonder if incorporating parishes, where we admittedly live under two systems of law in the Church, and even though it is separately incorporated, still, under the influence of the Bishop, do you think that there is a strong possibility that the Internal Revenue Service would pierce the corporate veil and acknowledge it for what it is and, therefore, enlarge upon whatever investigation they may have started out to do in the first place, rather than confine it to the legal entity which is incorporated?

WHELAN:

Well, I'm certain that the present leadership in the exempt organizations part of IRS is really hungry for data. They want to find out as much as they can find out. However, on the basis of the three conferences that I've had with these people in the last six months (one at their invitation in June and the two that I set up with respect to the Cistercians), I could detect no hostility, no antagonism of any kind. I don't think that we need to fear that they are suddenly going to start casting their dragnet wide or far. They will start enforcing this matter of unrelated business income, and specifically with respect to Churches, in a vigorous way. The more we insist on our unity, the more we strengthen any tendency that there may be in IRS to say "Okay, let's disregard these separate corporations." I would also like to point out, especially in connection with Father Maida's study and

with the questions that we've been concerned with ever since John McGrath published his monograph, that it might be worthwhile for us to reflect on the reasons why the Church has separately incorporated so many different ecclesiastical enterprises.

Why do we have all these separate corporations? Not just at the parish level in some states, but think of all our schools, hospitals, colleges, and so on.

One reason, of course, is to limit liability—an historic reason for incorporation. To the extent that reason is still important, really making the corporation an honest-to-goodness, separate corporation can be very important.

Secondly, in many states, with respect to certain types of enterprises, you have to incorporate, or you can't do what you want to do. For example, in New York State, you cannot have a college that grants degrees unless you have a corporate charter that's approved by the Board of Regents. I suspect that in a number of states the same thing is true of hospitals and perhaps with other types of charitable enterprises that the Church has initiated.

Thirdly, in many instances there are public relations reasons for creating a separate image, not one that's totally divorced from the Church but one in which the people can see that there's a difference between the Xavier Guild for the Blind and the New York Province of the Society of Jesus or the Archdiocese of New York. One reason for wanting this is to attract a broader base of public support. If people had to make their donations to the Archdiocese of New York and the New York Province of the Society of Jesus, you might not attract as many supporters for the enterprise as you would if you clearly have a separate corporation which is devoted to this particular charitable work.

Moreover, a separate corporation is necessary in many instances if there is to be any real hope of attracting public or federal financial assistance. Even though the Supreme Court said in *Hunt v. McNair* (the Baptist College case from Charleston) that ecclesiastical control was not a fatal obstacle to public support, I think that there will be great difficulty about having government checks made out to the Archdiocese of Washington rather than Georgetown University or Providence Hospital.

There are two other considerations, which I think have been important.

One is that in many states, in the past at least, there have been special limitations on the amount of property that a religious corporation can own. In order to avoid those limitations, we set up many different religious corporations.

Finally, and I think very importantly, the fundamental reason for separate incorporation has often been to attempt to mirror ecclesiastical law, whether that be canon law or the law of a particular religious congre-

gation. For example, in the Jesuit Order, as in many other religious orders of men and women, we have very clear rules about what belongs to the province and what belongs to individual houses. And, rather than have everything, all of the assets of all the enterprises, held by the province corporation, it has helped to mirror Jesuit law to have separate civil corporations. Moreover, at the parish level, it remains true that the property of the parish is not the property of the Diocese to be dealt with as the Bishop sees fit. There are rules, of course, about what he may and may not do. And, so, in some Dioceses, there is the feeling, at least on the part of some, that having separate incorporation of the parish is some protection for mirroring these distinctions in the law of the Church.

At any rate, if these reasons have been important in the past, the question is: Are these reasons (or any of them) still important today? If they are important today—in other words, if we have a significant legal objective that we are pursuing through the use of these separate corporations—then it will not help us at all to say to the government, whether IRS, NLRB or anybody else, “Don’t pay attention to the fact that we have created separate corporations. Treat all Catholic institutions in the United States as if they were a single corporate entity.”

FATHER MAIDA, DIOCESE OF PITTSBURGH:

The main thing as far as the Church is concerned is that, wherever you have the protection of incorporation around Church property, be it a parish, a hospital, a province, or a small Jesuit house—no matter where down the line you have that corporate identity, and the obligation to civil law, the control of each one of those institutions must be in the proper, legitimate ecclesiastical authority. Therefore, where the Bishop permits separate incorporation of his parishes, he’d better have control of that corporation and the people who operate it, or he’s in big trouble. That’s the only point I make, and I think that all those points you make are valid, and I think, quite frankly, that the ownership idea is overplayed in this whole area. The more basic thing is the control, that all the people in the Church who have responsibility under canon law of administering Church property and institutions, also have control in the civil law corporation.

Two more observations. First, historically, IRS has recognized this concept of control, because you’ve had all kinds of corporations, such as we’ve indicated. We’ve lumped them together in the Catholic Directory, and IRS says fine. Somehow you all belong to the Church—we haven’t figured it out—but somehow you belong to Religion.

We don’t have the time, but I can give you some good practical experiences which I’ve had in the civil courts of Austin, Texas, wherein the courts have recognized the canon law of the Church in resolving Church property and tax questions.

EDWARD MCGOWAN:

If I can go back for a minute to an earlier topic and Mr. Spevack's remark that there ought to be a connection with regard to debt-financed income between the debt and the property, it makes me wonder if they will be developing a doctrine that there ought to be a traceable connection between the debt and the income-producing purpose. An example which comes to mind is a school which is heavily debt-financed, because of district consolidation or something it becomes a surplus in the parochial school system, and is rented to a third party. Now, at the time the debt was contracted, there was no income-producing purpose in the debt, but now you have a piece of property that was debt-financed, but which is now income property. Would Mr. Spevack address that, please.

SPEVACK:

That's a hard question—the indebtedness was not incurred to acquire the property. I'll presume that if somebody else operated the school, it's unrelated for exempt purposes at this point. My reaction is that the statute should be read fairly closely. There's no connection between the indebtedness and income-producing use of the school.

BOB ROBINSON, DIOCESE OF PORTLAND, MAINE:

I'd like to ask Father Whelan, if, in fact, the Ordinary's responsibility concerning the alienation of the patrimony of the Church, if it, in fact, is ultimately his responsibility. And, if, in fact, the several corporations involving the parishes throughout the Diocese include as a member of the board the Bishop in each instance, and if there are about 40 or 50 corporations, he is, in fact, the presiding officer or the chairman of the board. Is this not tantamount to being, to holding, the Ordinary as the responsible person and is this not, in fact, then solved by the use of a corporation sole made that much easier by use of the corporation sole wherein the total responsibility is with the corporation sole or the Ordinary, both canonically and civilly? I guess what I'm saying is that it would seem that, by use of these many, many corporations, in no instance are they ever relinquishing completely their hold on the Ordinary for the final ultimate responsibility. If my conversations with others are correct, it is my understanding, for example, in some Dioceses, when it's necessary to obtain financial help or a mortgage or support, it doesn't make any difference, as long as the Ordinary is on hand to execute the document. Now, if he's the corporation sole, obviously, legally, as well as morally, he's there. In those instances where you're dealing with separate parishes, it seems that they again call upon some relationship with the Ordinary in order to again get the support

of the Diocesan level. It seems that we're talking about one and the same thing. In fact, in all instances they require the Ordinary to be on hand.

WHELAN:

I hope I can give a gentle and sweet answer to the question. Because the problem is that, in many Dioceses throughout the world, the idea of actually vesting total control over Church property in the particular Ordinary—the Bishop at that time and place—might well be the surest way to guarantee the loss of the patrimony of the Church. We have to face up to the reality here. The Ordinary has great responsibilities under canon law. The problem is how he can reasonably and faithfully discharge the duties that he has to protect the patrimony of the Church. We do have a law of alienation that applies to both the Dioceses and the religious orders, and Father Maida can tell you much more about that than I can.

The problem though, in the practical order, is how to effectuate this supervision. My difficulty with a corporation sole as being the solution to the problem is that I think it is an illusory solution in most cases, because the Bishop must in most cases rely on not only the advice of the experts he assembles around him, but on their judgment. The Bishop has got so many things to do under canon law that it's a marvel he accepts the job. There is just so much that he's supposed to do. He's supposed to be pastor, leader, teacher, and he's also supposed to be the supreme alienator. This gets into serious practical problems which I'm sure all of you are quite familiar with.

Now, as far as the Holy See is concerned, I am not aware of any preference on their part for corporations sole as against separate corporations. The Holy See is concerned, and rightly so, about the question of who really has control over Church property. I think a variety of mechanisms can be employed.

I have a deep feeling, though, that the most important protection that we have lies in the fidelity of the people who are chosen as members of the board of directors or trustees. At *America* magazine, for example, we have a membership corporation, and there are three members. There is Father Campion, the Editor-in-Chief, who was picked by Father Arrupe to be Editor-in-Chief, and was duly elected by the board of directors as the president of the corporation after the General nominated him for the job. But Father Carney and I can fire Father Campion as far as the law of New York is concerned at any time we choose to do so. The question is the choice of personnel upon whom you can rely in the care of Church property, rather than any particular mechanism. To think that the Bishop of any Diocese at all, not just a large one, but even the small ones, could actually assume personal knowledge—could get personal knowledge and assume personal responsibility for every single transaction that might qualify as alienation—is an unrealistic idea.

JIM EVERS, DIOCESE OF PATERSON:

Could I comment on that in relation to the conflict of whether you should have a corporation sole or separately incorporated parishes?

In our state law, it is provided specifically for the incorporation of Roman Catholic Churches, and there must be five incorporators, and the law says there must be the Bishop, the Vicar General, the Chancellor and two priests of the Diocese. The law further provides that the president of every parish corporation must be the Bishop, the Secretary must be the pastor. So, I think that answers the problem.

WHELAN:

I think the big problem is when we move from parishes to colleges to hospitals, old folks' homes, and so on. The minute we get away from the innermost structure of the Church, the more the reasons seem to be advantageous for a separate civil incorporation. I also think that—we're talking about control now—to think that one person can actually have the expertise and energy to attend to all of the affairs of all of the Catholic institutions in any Diocese in the United States boggles my imagination. There is a level of supervision; but the further up the ladder you go, the broader and more general and more long term the questions become. I get nervous sometimes when I hear people talking about maintaining control of all the Catholic institutions; because, while I agree with that in principle, my problem is a practical problem, how far down and to what level of minute detail does this control extend. Of course, as far as alienation is concerned, that's a highly specified type of transaction, and there are some very well-defined rules in that area.

QUESTION:

Father, if the Bishop is the chief officer in every single one of those corporations in say, Paterson, there really isn't much difference. I'm thinking that the mind would still be boggled, then, with regard to the kind of responsibility he has in all of those several corporations.

WHELAN:

Yes, I think we have to have a practical, realistic approach to the degree of control that can be achieved. One of the things that Vatican II talked about very much is this principle of subsidiarity. The guys at the top make the top decisions. They don't make all the decisions, because they can't physically make all the decisions. If we get various structures, whether it's separate corporations or trusts or corporations or whatever it is, we can use these structures to keep the levels of responsibility where they're supposed to be in the Church. Then we're doing our job.

SPEVACK:

The gentleman asked about the school that was purchased with mortgage financing and then converted there for a couple of years to be rented out to another institution, therefore, became unrelated, and I opined that that would not be acquisition indebtedness, because the indebtedness wasn't incurred to engage in the unrelated business.

The regulations take the opposite approach. They say that, when you change later down the line, at that point from a related to an unrelated use, it becomes debt-financed, and of course you can still trace the indebtedness to a particular property as though you borrowed it for an unrelated purpose. That's regulation 1.514(c)-1(a)(3).

JOHN O'CONNOR, DIOCESE OF COLUMBUS, OHIO:

I have a question about the debt-financing thing, too. We've been given property over the years from time to time which is income-producing rental property. It has mortgages already on it. When the property is given, in several instances, it has been given to a particular Church, such as St. Stephen's Church—three pieces of property—there are mortgages on each one. Now we don't assume the mortgages, but we paid them down out of the rental income. Now, we're in the process of selling this property off. We've got most of it sold; and, because of the economic situation of today, they're sold by land contract. However, we hope to have all the money in and have this property out of our possession by the end of 1975. How are we situated under that debt-financed thing?

SPEVACK:

The Reform Act which would, of course, apply beginning next year reverses the pre-Tax Reform Act case which said that donated mortgaged property was not subject to the business use rental tax—you could sell it all this year and avoid the problem, presumably, unless you've got post-1966 indebtedness involved. As a general rule, they say that the statute provides that mortgaged property is treated as debt-financed property, even though you don't assume the mortgage with the exception that it's not treated as acquisition indebtedness purposes taken into account for debt-financed income during the ten years following the date the property is acquired. In other words, if the organization acquires the property by gift subject to a mortgage which was placed on the property more than five years before the gift—that is, the property was held by the donor more than five years before the gift—the indebtedness secured by the mortgage is not treated as acquisition indebtedness for ten years following the date of the gift, except if the organization assumes the mortgages, but you're not involved in that case. In other words, if the donor had it more than ten

years before he gave it and he didn't put the mortgage on in the last five years, it won't be considered acquisition indebtedness for the next ten years after he gives it. Then you have to start worrying about—what I guess I'm not sure in my own mind is—how this relates if you got the property before 1966? Presumably, we would not be subject to this rule at all.

O'CONNOR:

We got it back in 1966. December and August of 1966.

SPEVACK:

Well, you'd probably be subject to the rule then. In other words, the statutory provision here is section 514(c)(2), which talks about property subject to mortgages. In other words, you got it less than ten years ago.

O'CONNOR:

Correct.

SPEVACK:

All right, then, indebtedness secured is acquisition indebtedness for ten years following the date of the acquisition. We haven't sold it for ten years; therefore, it's not treated as acquisition indebtedness and should not be subject to the tax.

WHELAN:

The way I tried to summarize this in my seminar is the 5-5-10 rule. When mortgaged property is given to you, you have to ask, "How old is the mortgage?" Does it predate the date on which the gift was given by at least five years? Did the donor own the property for more than five years before he gave it to you? If the answer to both of those questions is yes, then you have ten years in which you don't have to worry about the debt that's on the property, unless you assume the debt. You'll have to work that out from the context of your own facts. I think that's the way it works.

J. MULVANEY, NATIONAL CATHOLIC CEMETERY CONFERENCE:

I would like to ask of General Counsel—Do you plan to distribute any memoranda or assistance to us in regard to our liabilities or responsibilities, if any, in connection with the Pension Reform Act?

REED:

A memorandum is currently being prepared on that subject—it's substantially complete—quite frankly, we have not finalized it yet, because

we're waiting for some more definitive advice from the Treasury, which is wrestling around with quite a few rulings. But, the answer is yes, we are going to distribute one within a very short time. We could distribute it today, but we're going to wait for a short period of time, a month or so, in anticipation of the Treasury ruling.

BOB BURCH, DUBUQUE DIOCESE:

I'd like to ask Mr. Spevack this question. Mr. Spevack, do you consider rental income as received by a tax-exempt organization from another tax-exempt organization for the lease of a non-debt-financed piece of real estate for purposes of a lessee that are inconsistent or different from the corporate purposes of the lessor as being unrelated business income?

SPEVACK:

I think you said that it's not debt-financed property. Right?

BURCH:

That's correct.

SPEVACK:

Therefore, it should be—in other words, it should be rents from real property and come under the general section of section 512(b)(3) of the Code. I'm assuming that we don't have substantial personal property.

BURCH:

It's strictly real estate.

SPEVACK:

Then we'd just come under the general exception for rentals from real property. No tax at all.

QUESTION:

I'd like to ask two very general questions that I think will help us all. First, what has been done, or what will be done, in terms of convincing the Ordinary from the internal authority of the Church, the office of the General Counsel, or the Holy See, that the IRS, despite the canon law, will have the authority to tax under certain circumstances and that it would pay to plan ahead of time? Secondly, what is the desire, intent, or direction of the Holy See in terms of what they would like to see done with taxable income activities, as related to the purpose of the Church?

REED:

Obviously, we can't answer that question. We can't answer the latter part of it. The first part—what are we going to do? As indicated earlier, as I recall, we are going to circulate materials which will bear on this topic. It will go to the Bishop, it will go to the Diocesan attorneys and the very fact that you're here indicates that we have alerted the Bishop to the importance of this issue. So, we will be in contact with the Bishop through the normal channels. We will be in contact with you, also. As far as the Holy See is concerned, I don't know about that.

(Continuation of panel on Tuesday morning:)

QUESTION:

Could we have a clarification on the \$1000 rule and the difference between Form 990 and Form 990T?

REED:

Up to this time, all organizations listed in the Official Catholic Directory have not been obliged to file Form 990. Each year the Secretary has held that any organization in the Group Ruling extended to a Church is ipso facto exempt from filing Form 990. Precisely because they have not defined the term "integrated auxiliary," they have not defined the term "Church." Now, we've had a meeting with IRS, or with the Treasury, in early January. They told us that they were definitely going to file most of the rulemaking, define the term "integrated auxiliary," by January 28. They haven't filed anything yet. We talked with them subsequently, we filed comments, they've informed us that the issue is sort of bogged down again, so I really don't know what the situation will be next year, except that the Treasury does hope one way or another, to get some of the organizations such as colleges and hospitals under the 990 situation.

Form 990T is the return which you file if you have an unrelated business activity, the gross of which is \$1000 or more. That is the basic distinction—990T relates to the unrelated business, 990 is the basic financial return.

Secondly, the question came up yesterday about how you handle the various \$1000 deductions that extended to the Diocese and the parish and the various units of a religious order. We had the answer yesterday, we have it in the regs, but we never got around to giving it to you. I think we gave you the citation. Let me just read from the regs, 1.512(b)-1(h)(2). They state:

A Diocese, province of a religious order or a convention or association of churches shall not be entitled to a specific deduction for a local unit which, for a taxable year, filed a separate return. In the case of a local unit which,

for a taxable year, files a separate return, such local unit may claim a specific deduction equal to the lower of \$1,000 or the gross income derived from any unrelated trade or business which it regularly conducts.

Then they give, by way of example, roughly the following:

X is a Church. On the calendar year basis, *X* is divided into local units, *A*, *B*, *C*, and *D*. During 1973, *A*, *B*, *C*, and *D* derived gross income of respectively \$1200, \$800, \$1500, and \$700 from unrelated business activities. Furthermore, for such taxable year, *D* files a separate return. *X* may claim a specific deduction of \$1000 with respect to *A*, \$800 with respect to *B* and \$1000 with respect to *C*. *A* may not claim a deduction with respect to *D*. *D*, however, on its own, may claim a deduction, precisely because it has filed a return.

This is the key example which is set forth in the regulations, and I think it should throw at least some light on the situation which we discussed yesterday. I don't want to get into any of the canonical discussions that we had yesterday at all, but I think you're going to have to make a decision based on the facts. You might have an unrelated business activity which is commercial—you don't want the Diocese reporting on that at all, let the parish report on it. You make your distinction based on public relations implications of the particular unrelated business activities. And remember at all times that foremost in your consideration must be the insulation of the Diocese particularly, I think, from an audit. The more you can do to preclude an audit of the Diocese, the better off you're going to be, and I'm sure your Bishop will be much happier.

Now, one final thing. I had occasion about a month or two ago to address the Diocesan attorneys, their accountants, and the Chancellors from the several Dioceses in Indiana. It proved to be a tremendous experience, and probably one of the reasons why we invited the accountants to this meeting. At the conclusion of that address, the group decided that they would circulate a questionnaire to all the parishes, in order to determine—or to help the parishes and to help, ultimately, the Diocese, determine—what areas of potential unrelated business activity they might have.

Jim Flynn of the Diocese of Evansville prepared a questionnaire—I'm sure he doesn't consider it a model questionnaire, but it's an excellent questionnaire—it should be very helpful to any diocese, I would think. He brought with him a substantial number of copies, and they will be distributed before the day is over. I would suggest that you look at this—you may want to make some changes, you may not wish to use it at all. But, to the extent that you do use this, you will be able to get at least a profile of your Diocese with respect to the potential unrelated business which it may or may not have. So, this will be distributed a little later on.

WHELAN:

I just wanted to speak about one point on which I differed from Mr. Nolan yesterday. No one differs with Mr. Nolan easily. I want to make precisely clear what it is I differ on.

That is: when you have an unrelated business and part of the work force is made up of religious who have taken the vow of poverty and, in the past, have not been assigned a salary. Now, that's the typical situation in the Cistercian monasteries, and it would also be true of some of the other monastic orders that have the same rule of self-support. You may run into it in the Diocese or in religious congregations that are closely connected with the Diocese.

Mr. Nolan's suggestion was that the religious be assigned a salary and the salary be paid and that they would pay individual income tax on that salary. That's what I'm against, unless you're up against the wall, and that's the only way out of the situation. In many instances, religious with the vow of poverty are already receiving salaries for work they do. That is to say, their congregations are receiving compensation for the work rendered by the religious. I don't think the Jesuits would be very happy if the system, under which many of our men work in various institutions and the institutions pay for the work of the Jesuits, were changed. But, in the situation where you have an unrelated trade or business and part of the work force is made up of religious with vows of poverty and they have not been assigned salaries in the past, I do not think we should go in and change that unless it's absolutely necessary as a last resort. I have two reasons for it: first of all, there's the religious reason. I think that the assignment of salaries does carry with it a lot of psychological problems and can become severe for particular individuals and can become a source of dissension within a religious congregation.

I also have a technical, legal reason for it, and that is that I am very skeptical about the IRS really honoring that kind of a transaction. I think they'll consider it a sham, and Mr. Nolan himself indicated that he felt there might be some trouble along that line. I agree with him—I think that there will be a lot of trouble along that line.

BILL O'CONNOR, DIOCESE OF GARY, INDIANA:

I have a rather brief comment and two questions directed to Father Whelan.

I am disturbed, Father, and I am sure there are some other practicing attorneys here who are disturbed, about your decision actively and intentionally to seek Internal Revenue rulings from the IRS concerning unrelated business income questions as they pertain to, I believe you said, the monastic orders. You indicated yesterday that this was a matter which you struggled with for a long time before making the decision to seek these

rulings. As a busy lawyer who represents the Diocese of Gary in many different matters and who has a few other clients, I sincerely believe it would be a great mistake for you to seek these Revenue rulings, and I urge you not to do so for the following reasons:

First, the rulings, if adopted, will affect all of us in every Diocese of the United States. No one man in the Church, in my opinion, can make that decision, nor should any group of men make such a decision to seek these rulings unless the group is truly representative of all the Ordinaries of the United States after they have been informed of the risks involved.

Secondly, if you do not seek such rulings, there may never be a ruling issued by which we are all bound. In other words, you are asking for problems and troubles which you may not otherwise ever encounter.

Thirdly, if the rulings you seek are adverse to the interests of the Church, we will all be bound by them until the courts rule otherwise. Rather, I would ask you to follow the following procedure:

First, treat each case separately, and make a decision based on the facts of each case in the applicable law. It would seem to me that possibly the Trappist Monastery in Kentucky might have different problems than some other monastery in California.

Secondly, if your decision on a particular case is that there is no tax due, then in that case take no affirmative action and let the IRS come to you.

Thirdly, if the IRS comes to you, stick to your decision and attempt to convince them of the error of their ways.

Fourthly, if it is possible for you to compromise with the IRS, and it is to your advantage to do so, why of course, you do so. If it is not to your advantage, resist them at every turn, remembering that, from what I heard here yesterday, there is not an unlimited right to audit your books. If you lose that battle in the courtroom after a number of months, you may be there for a number of years, either in the tax court or the district court and on up to the other courts. Please understand me—I'm not suggesting that anybody try to avoid the tax. If the tax is due, we ought to pay it.

I am suggesting, however, that, if it's necessary some day to have the terms defined, then it ought to be done in a court of law, where the court makes the final determination, rather than some bureaucratic administrative agency of government, where there are no sound rules of evidence and no rules of trial procedure applicable to the purpose of arriving at the truth.

Now, further, you indicated that we attorneys who represent business clients might or should take a different approach if the Church were involved. I cannot see that distinction. The only difference would be that I believe most of these gentlemen here would probably work a little harder and they would probably work, as necessary, without compensation, in order to further the interests of the Church. I see no moral issue involved

in these matters. If we owe the tax, we follow the law and we pay it, and if we don't, we don't pay it.

Finally, as you know, I have a great respect for you as a priest and as a professor of law, but I think there's a lot of knowledge in this room, maybe not from me, but from all these other fellows, who are out in the pits everyday, and I think you should consider their judgment.

I want to ask finally the two questions that I have. First, would you accept a majority vote decision of this group not to seek these rulings? Number two: If you would accept that, would you have whoever is chairman of this meeting call for such a vote?

WHELAN:

My answer is no. I don't think I need to explain to you why the answer is no. But, if I need to, the answer would be that I doubt that there are very many of you who would submit the interests of your clients to a majority of this or any other group.

Secondly, I have consulted very extensively with attorneys about this matter, and I have also kept the General Counsel of USCC informed at every stage of the proceedings, and he has actually been present at these conferences.

Thirdly, I think it is a reasonable course of action to wait for the IRS to come and chase you. I also think it is a reasonable course of action not to wait until they come and chase you, but to try to have an influence, and I hope a very helpful influence, in the formulation of the positions they are going to take.

One of the problems with trying to treat cases individually and apply the law, as you suggested, is that the applicable law hasn't been established yet. As I look at the picture for the Cistercian monasteries, if they sit and wait until the IRS comes and chases them, it's going to be 1985, 1988 before these matters are fully settled. It may be that long, anyway. But, as all of you know from reading the cases in the tax court and in the district courts and the courts of appeals, many of their decisions deal with tax years that are anywhere from 10 to 15 years old. I do not think it is in the interest, either of the Church at large or of the Cistercians in particular, to postpone some of these very basic questions that long.

Finally, a ruling is only a ruling. It establishes the IRS's position. If you would rather have the individual regional commissioner or the directors of those special districts for exempt organizations handle this on an individual basis, I think you're asking for more trouble than following the course of trying to deal with the national office and find out what position they are going to take on some of these basic questions, because then it's possible to do some planning. It's also possible, once they've taken the position, to go to court and to litigate the issue. It's even possible also—I

think this is a very important aspect of this matter—to go to Congress and to seek remedial legislation, if that's necessary.

O'CONNOR:

Father, could I make just one remark. I am not asking you to submit the interests of your client to a vote of this group. It seems to me, and if you'll pardon me for saying this, the first client you have is the Catholic Church. If you have other clients whom you represent, I think their interests, should they be in conflict with the interests of the Church, then you don't represent them. So, I'm not asking you to abide by a vote of this group in representing a client as we practicing lawyers would represent a client at all. The only other comment I have is this: What's all the hurry?

I've talked to at least 20 or 25 lawyers here and asked them this question: "Have you had any real unrelated business income problems in your Diocese?" I have yet to have one say he does.

(Father Whelan made no further reply to Mr. O'Connor. There was no further discussion on the floor of postponing the request for the rulings.)