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Recommended Citation

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TAX EXEMPTION

AND THE CHURCH



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Should the churches be granted tax exemptions by the state? What are the principles involved? Can business subject to the 52 per cent Federal corporate income tax be expected to compete with church-owned industries that go tax free? And what of the church itself—will material wealth be its undoing? These are some of the questions that are being debated with increasing fervor from coast to coast.

Many examples of exemption abuses have been cited:

In Montana a ninety-five-thousand-acre wheat ranch has been sold to a "charitable" trust in Omaha for two million dollars. Its earnings, which had been subject to a 38 per cent tax, are now tax exempt.

Proceeds from thirty-five thousand acres of cotton land in California's San Joaquin Valley now go to another "charitable, nonprofit corporation." These two ranches have drawn almost five million dollars in U.S. farm loans. Thus the U.S. Government guarantees that they will make a profit, while at the same time it is not able to tax these profits!¹

Radio and television station WWL in New Orleans, owned and operated by the Jesuits of Loyola University, sells time for commercial advertising, while enjoying a tax exempt status as a church institution.

So much church-owned land is exempted from taxes in Nashville, Tennessee, and Boston, Massachusetts, that

these cities are hard pressed to raise enough tax revenues to meet the needs of urban development. Milwaukee is estimated to be losing \$2.5 million a year in real estate taxes to church and fraternal property owners.

Churches own radio stations, hotels, office buildings, parking lots, bakeries, warehouses. They do contract printing, invest in stocks and bonds, and speculate in real estate. They have investments in stocks and bonds that for some major denominations run into millions of dollars.²

Revenue flows into church treasuries from properties that include tenants such as taverns and pool halls. Yet they pay no Federal income tax—even if they profit from unrelated business enterprises—no property taxes, and estate and gift taxes cannot be levied on them.

Thirty years ago about 12 per cent of real property was tax exempt; today the figure is approximately 30 per cent. Churches and other religious organizations account for one third of this. Says a prominent churchman: in view of their favored tax positions, "with reasonably prudent management, the churches ought to be able to control the whole economy of the nation within the predictable future."³

Both churchmen and statesmen are becoming increasingly sensitive to the questions involved in tax-exemption abuses. Samuel Cardinal Stritch of Chicago has protested against pious profiteering. E. Carson Blake, president of the National Council of Churches, has suggested careful consideration of the questions of the repeal of tax exemptions that let churches engage in tax-free business enterprises that are in competition with regular business concerns, and voluntary contributions by the church of from 1 to 10 per cent of the estimated value of

their real estate.⁴ And the House Ways and Means Committee is taking a long look at church tax-exemption practices.

The problem of tax exemptions is not uniquely American. It existed long before the American Republic. The feudal regimes of Europe extended "tax grace" and a privileged status to the church, which abused its privilege by establishing lucrative industries and businesses—tax free.

In France, prior to the Revolution, taxation implied dishonor, and was exacted only from the lower classes. The lower the class, the higher the taxes. Higher echelons of the French clergy, along with the wealthy aristocratic classes, were counted among the "privileged," and as such paid no taxes. The French Revolution itself was to a large extent caused by the church's ruthless exploiting of its privileges.

The medieval church had become in several feudal countries of Western Europe the wealthiest landowner and had caused honest Christians and entire movements to go underground; poverty became an ideal to medieval reform groups—poverty was the "bride" of Saint Francis. "Holy profiteering" furnished the dynamite that caused bloody revolutions, disrupted reformation, and led eventually to the expropriation of church property.

Obviously, the pitfalls of the feudal regime do not obtain in the United States, but even a constitutionally liberal structure has not removed the dangers that face a materially wealthy church. The church, which has prospered in adversity, has too often found wealth to be its undoing.

The Principle

Tax exemption for the church is not a matter of constitutional right; it is intrinsically a matter of legislative grace offered by various States as well as by the Federal Government.

Since tax exemption is merely a legislative tradition—not guaranteed by the U.S. Constitution—it may be taken away. It is, of course, implied that tax exemption applies solely to church activity; it refers to the land necessary for the church and to charitable community projects that the State, at least tacitly, delegates to the churches. This attitude by the State has been expressed in various constitutions and courts, as, for instance, in an Indiana court:

Education, literature, science, religion, charity and benevolence are all promoters of the welfare of society. Through these agencies the standard of good citizenship is elevated and consequently the expenses of government diminished.⁵

As a prerequisite for tax exemption it must at least "appear that the property is so held as to be dedicated to public benefit instead of to private advantage or gain, and that it is devoted to the public use."⁶ An Atlanta, Georgia, court put it poetically: Tax exemption is granted for the "beneficence to the destitute and poor and all those comely virtues and amiable qualities which clothe life 'in decent drapery' and impart a charm to ex-

istence, constitute a 'cheap defense of nations' but furnish a sure basis on which the fabric of civil society can rest and without which it could not endure."⁷

Religious Corporations and the State

While the legislative tradition of tax exemption in the U.S. has its origin in England, there is a basic difference between English ecclesiastical corporations and those of the United States. In English law the churches are composed "entirely of ecclesiastical persons and subject to the ecclesiastical judicatories."⁸ The great Scottish economist Adam Smith, who theorized on the reasons that make a nation wealthy (1776), urged the consideration of the social services that can be rendered by the church.⁹ In contrast, corporations in the United States are creatures of the law and can exercise only such authority as the law gives them.

In order to clarify its position toward the churches, the state is first led to define *church*. A court decision in New York defined the church as consisting of "an indefinite number of persons . . . who have made a public profession of their faith; and who are associated together by a covenant of Church fellowship for the purpose of celebrating the sacraments and watching over the spiritual welfare of each other."¹⁰

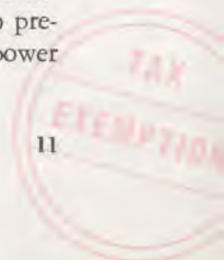
A church is an incorporated ecclesiastical society and is, of course, not a business corporation. When a church is organized it may form a church corporation, which is a legal device enabling it to keep separate from the state: "The Church which is powerless in the temporal order is assisted by a legal agency—the corporation, which in turn has no authority out of the spiritual realm." Thus there is a "juxtaposition of the ecclesiastical body and a recognized corporation."¹¹

All States do not look upon church corporations in the same light. The spectrum ranges from complete prohibition of religious corporations (as in Virginia and West Virginia) to the recognition and acceptance of all religious groups (as in Arkansas, Mississippi, New Hampshire, and North Carolina).¹² The corporation can exist without the church and the church without the corporation. "The corporation created by the State may continue though the Church is dissolved, while the Church may continue though its charter has expired or been canceled by the State." Each one is therefore derived from a different source, has different powers and is strictly independent of each other.¹³

Catholic and Protestant Views

The Catholic concept of church-state relationship is well known; their principle on tax exemption may be understood in the following statement:

"It is to the best interests of the civil society that the rights of the Church be guaranteed by the law. It has a duty towards its citizens who, recognizing and accepting the truth of the Christian religion, wish to preserve it and can therefore demand that the civil power assure its existence and prosperity."



"The least that can be done by the State is to assure the Church the right to acquire property in all ways by which its own subjects can acquire it. The Church on its part subjects itself and its institution to the formalities of the civil law in property transactions in order to obtain legal protection and to maintain peace and avoid unnecessary collision with the civil authority."¹⁴

The Catholic Code of Canon Law further states: "The Catholic Church . . . has the native right freely and independently of acquiring, apart from civil authority, temporal goods for pursuing ends proper to themselves;" and the Church "always reserves the basic right to acquire and possess, in virtue of its divinely given native and independent right."¹⁵ "Proper ends" can, of course, be diversely interpreted.

The Protestant view is basically different:

The personal and property rights of Churches and their members are civil and of them the courts of the States have exclusive jurisdiction. The ecclesiastical courts have no jurisdiction to decide the rights of property and to enforce its protection.¹⁶

The relationship of a Protestant religious corporation to the State may be summed up in this manner:

The American religious corporation in its relation to the State is, unlike its predecessors, in no sense a public municipal body, but a mere private corporation created by the State for the benefit of the incorporators and those connected with them. In its relation to the Church it is not a spiritual agency with spiritual powers to preach the Gospel and administer the sacraments, but the humble secular handmaid whose functions are confined to the creation and enforcement of contracts and acquisition, management and disposition of property. The corporation thus has neither public nor ecclesiastical functions, being a mere business agent with strictly private secular powers.¹⁷

Exemption Not All "Grace"

Since each State is sovereign, major differences exist in the matter of tax exemption. Among State constitutions ten are silent on tax exemption while in others the exemption is settled by amendments.

To exempt churches from the tax is considered by some to be entirely a matter of "grace," but on the other hand, the State itself benefits from church activities. As an Atlanta court declared:

The advantages to the State are "cheap" when you consider that the Church, which has a range of action not obtainable by the State, deals in matters of benevolence, charity, generosity, love of our fellow man, deference to rank, age and sex, tenderness to the young, active sympathy to those in trouble or distress, beneficence to the destitute and poor, and all those comely virtues and amiable qualities which clothe life "in decent drapery" and impart a charm to existence, and they constitute not only the "chief defense of the nations" but furnish a sure basis on which the fabric of civil society can rest and without which it could not endure.¹⁸

Since the State also benefits from the activity of the church it may be argued that an exemption is not entirely a matter of grace. Indeed, "because exemption from taxation serves the public and not a private in-

terest, it cannot be regarded as a gift or donation of the public credit to or in aid of the individual association or corporation in whose favor the exemption is declared."¹⁹ An authority on tax exemption has said that "tax exemption of Church property is neither a grant-in-aid nor reward for public service, but society's recognition of the people's inestimable right of a religious expression."²⁰

There is more to that church-state relationship: the State gets the better deal. The church itself does not "profit" from the government's largesse:

The Church pays for light and heat, and, often, for water. It is assessed for street improvement, police and fire protection, paid for by the members in individual tax payment.²¹

One of the often recurring clichés with reference to taxation is that "the power to tax involves the power to destroy." A business enterprise may be taxed excessively and destroyed, either because of needed revenue or for sake of the regulation and control of commerce. The State has no tax limit, beyond its own discretion. This power may also be applied in the regulation and the exercise of religion. It is conceivable that a government antagonistic to religion or to a particular church could either destroy it or make it ineffective. Tax exemption should thus be well defined and clearly understood.

Since the prerequisites for tax exemption for the churches vary from State to State, interpretations also vary. They range from a mandatory provision without need of further legislation, through permissive promises, to no promises at all. In New Hampshire, church value exceeding \$150,000 is taxed. Some States grant limited acreage to churches—Wyoming, Kansas, and New Jersey limit it to five acres; Rhode Island to one; Kentucky to two in the country and one in the city. Some States place maximum exemptions on parsonages.

Saintly Profiteering

One of the greatest dangers of tax exemptions, as implied earlier, does not apply to the State but to the church. The tax-exempted church faces the grave danger of becoming encumbered with property. On various occasions warnings have been sounded, as for example this statement in the *Christian Century*:

The warning cannot be sounded too often against allowing ecclesiasticism to become entrenched in property. This has been a determining or at least contributory cause of the downfall of all the old civilizations of history. . . . Under a hierarchic system there is a steady accretion of wealth. Though an unworthy materialistic motive may be quite lacking at the start, the very genius of ecclesiasticism especially in its hierarchic form, makes these accumulations inevitable. A materialistic motive invariably develops with the adding of wealth under the power of the Church.

The course of affairs in Europe from the establishment of the Church in the Empire of Constantine all down through the Middle Ages and into the Reformation times should be conclusive warning of what must happen when a Church grows rich. . . . When the institutions set to mediate the spiritual forces become weighted with material possessions the whole of the life of the people is blighted and degenerated.²²

The church is being called to a strict accounting. For the sake of its own soul the church must make a sober inventory of its position and where abuse is found, clean its house. If it does not, someone else will judge whether, under the mantle of holy pretense, the church is accumulating fat profits. Tax exemption is a privilege that, like liberty, can be lost by ignorance or abuse.

We may agree that it is basically unfair to levy the 52 per cent Federal corporate tax on business while allowing competitive church-owned industries such as radio stations, farms, and factories to go tax free. But what of the borderline cases? Consider the church that carries on an active educational, medical, and dietary program. Should these activities be tax exempt? Is not the church carrying out its program in a practical way by the manufacturing of foods, the establishment of sanitariums, and the organization of school industries? It must not be forgotten that small denominational colleges generally have no endowment. Their means of support comes largely through school industries, which have to be based on a business structure. Yet the college makes no profit. And the college itself costs the denomination just as the public school system costs the State. Denominational colleges are charitable (and expensive!) institutions. To them tax exemption should be granted.

It must be admitted that some churches have been able to acquire large tax-free landholdings. In many cases these have crowded out available sites for regular business. Not only do church-related institutions occupy, tax free, valuable city properties but they also sometimes make large profits. (A Sunday night bingo game may bring in several thousand tax-free dollars!) Municipalities or communities sometimes give large tracts of land to some church, Catholic or Protestant, to attract colleges or other church-related institutions. There is, however, a difference between granting land for a purpose that will bring income to the community, and granting land that will profit only the church. In fairness we must keep in mind the church-supported school, where tax exemption is proper.

In Conclusion

Tax exemption for churches became an accepted practice at a time when America was a rural nation and when the generous granting of many acres of land did not complicate the tax system or pose a problem to the ever-increasing population. In today's America tax exemption for a church might well be limited to \$25,000. Certainly in the area of "church-related" businesses, the "use to which church-owned realty is devoted" should determine whether it is taxed.²³

Church property *per se* must remain tax free. To lay a tax on churches would enhance the power of the State; it would enable the State to control the churches and would certainly be contrary to the basic principle of church-state separation. The State that has ever-increasing need of financial resources might jeopardize the



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Church bingo games range from small holiday operations to weekly programs that bring in several thousand tax-free dollars!

church's ability to operate as an effective agency. Moreover, church taxation would enable only wealthy churches to subsist.

Above all institutions the church should remain free from greed and material ambition. The church's first duty is to preach and to witness. The church that embarks on ambitious mercantile ventures may be tempted to seek material aggrandizement. As one writer said: "In the midst of prosperity lurks danger. Throughout the ages, riches and honor have ever been attended with peril to humility and spirituality. It is not the empty cup that we have difficulty in carrying; it is the cup full to the brim that must be carefully balanced. Affliction and adversity may cause sorrow; but it is prosperity that is most dangerous to spiritual life."²⁴ ★★

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