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 **PROPERTY TAX EXEMPTIONS FOR RELIGIOUS ORGANIZATIONS**

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Context – All fifty states and the District of Columbia provide an exemption for tax for property owned by religious organizations and used for religious or charitable purposes. One academic study from 2012 estimated that religious organizations own real property worth approximately $600 billion and received $26 billion in property tax benefits. In 2015 in New York City alone, the amount of real property tax exemptions for religious groups amounted to $650 million per year. The study from 2012 estimated that $2.2 billion worth of property taxes were not collected from properties owned by religious entities representing 3% of the annual budget of the State of Florida.

While the exemption for religious organizations has a long history, states and localities struggle to properly apply such exemptions in the face of what defines a religion, what activities are religious or charitable in nature and what activities are not exempt.

**Background**

Exemption from tax for the church dates back at least to Emperor Constantine who, after his conversion to Christianity, exempted churches from taxes. In medieval Europe churches were exempt from tax and were the primary providers of charity to the needy and also established hospitals and universities that were tax exempt.

The English reformation and accession of the Tudors to the throne led to the adoption of the Statute of Charitable Uses of 1601 (43 Elizabeth I c.4) which set forth the objects of charity and a process to ensure funds were properly used. As a result of the confiscation of the monasteries, funds were taken and endowments were examined to determine whether they supported proper charitable uses (establishment of jails; repair and maintenance of roads, bridges and churches; and support for poor maids) or if funds were meant to support “superstitious practices”, in which case they were forfeited. Neither hospital nor religious purposes (other than maintenance of church buildings) were identified as charitable. This statute also set the distinction between ‘deserving’ and ‘undeserving’ poor distinguishing those who were born with disabilities or had been disabled in war or by accident form those who were able-bodied by requiring a license to beg and denying such license to those not deemed worthy.

By the time of the American Revolution, nine of the thirteen original Colonies provided tax exemptions for church properties. (MA, CT & NH—Congregational Church; GA, MD, NY, NC; SC & VA—Church of England; NJ, PA & RI no exemption).

Three Presidents of the United States publicly expressed their opposition to tax exemptions for religious organizations.

**Modern Jurisprudence**

Walz v. Tax Commission, 397 US 664 (1970), a taxpayer challenged the tax exemption granted to religious organizations claiming that because churches, synagogues and mosques did not pay their share of property tax, he was indirectly required to contribute to the support of religion violating the First Amendment’s prohibition on establishment of religion made applicable to the states by the 14th Amendment.

Chief Justice Burger writing for the 8-1 majority found that the exemption applied to a variety of organizations engaged in charitable, educational and other pursuits. “New York, in common with the other states, has determined that certain entities that exist in a harmonious relationship to the community at large, and that foster its ‘moral or mental improvement’ should not be inhibited in their activities by property taxation”. Justice Brennan wrote a concurring opinion and did Justice Harlan. Justice Douglas wrote a lengthy dissent in which he set the question as: “whether believers -organized in church groups- can be made exempt from real estate taxes merely because they are believers, while non-believers, whether organized or not, must pay the real estate taxes.”

**What does it mean to be a religion?**

**Non tax cases:**

US v. Seeger, 380 US 163 (1965); Welsh v. US, 398 US 333 (1970) (Conscientious objector status under the Selective Service Law).

Davis v. Beason, 133 US 333 (1890) (Prosecution for conspiracy involving federal law requiring citizens of the territory of Idaho to submit a sworn statement that they did not practice polygamy nor were members of an organization holding as a tenet the practice of polygamy).

Ex parte Jentzsch, 112 Cal. 468 (Challenge to a law requiring barbershops to be closed on Sunday).

Wisconsin v. Yoder, 406 US 205 (1972) (Amish need not send their children to school beyond 8th grade).

Lemon v. Kurtzman, 403 US 602 (1971) (Subsidizing salaries for parochial school teachers is unconstitutional after examination of “the three main evils against which the Establishment Clause was intended to afford protection: “sponsorship, financial support, and active involvement of the sovereign in religious activity”).

Cavanaugh v. Bartelt, 4:14-CV-3183 (US District Court for the District of Nebraska (2016) (Pastafarian seeking religious accommodations in Nebraska State Penitentiary).

**Significant developments on tax exemptions for religious organizations:**

Matter of the Church of Scientology, 120 AD2d 376 (First Department 1986) (Personal inurement issue; settled by grant of exemption once the individual was no longer obtaining benefits).

Matter of Holy Spirit Association for the Unification of World Christianity, 62 AD2d 188 (First Department, 1978) (exemption granted, political motives and activities were ancillary to religious purpose).

Fellowship of Humanity, 153 Cal App 2d 673 (First Appellate District, 1957) (Humanist

Organization granted exemption).

Washington Ethical Society v. District of Columbia, 249 F.2d 127 (D.C. Circuit, 1957) (Ethical Culture Society, a non-theistic religion of ethics granted exemption)

Roberts v. Ravenwood Church of Wicca, 249 Ga 348 (Sup. Ct. Georgia, 1982) (Wiccan church granted exemption—with dicta that Satanic cults, demonology and stereotypical witchcraft ‘most emphatically’ do not constitute religion.)

Matter of Maetreum of Cybele, Magna Mater, Inc. v. McCoy, 24 NY3d 1023 (2014) (Pagan group following Cybeline Revival granted exemption)

Faith Christian Family Church - Panama City Property Appraiser denies exemption due to a two-week spring break party advertised as “Amnesia: The Tabernacle” at which the church building was used to host a ”lingerie, foam and anything but clothes party”. Panama City News Herald, December 5, 2015.

The IRS grants exemption to the Church of Cannabis (Forbes June 1, 2015) and Green Faith Ministry (Forbes June 4, 2015)

IRS Publication 1828:

Certain characteristics are generally attributed to churches.  These attributes of a church have been developed by the IRS and by court decisions.  They include:

* Distinct legal existence
* Recognized creed and form of worship
* Definite and distinct ecclesiastical government
* Formal code of doctrine and discipline
* Distinct religious history
* Membership not associated with any other church or denomination
* Organization of ordained ministers
* Ordained ministers selected after completing prescribed courses of study
* Literature of its own
* Established places of worship
* Regular congregations
* Regular religious services
* Sunday schools for the religious instruction of the young
* Schools for the preparation of its members

**Radio Stations**

Christian Voice of Central Ohio v. Testa, Supreme Court of Ohio #2016-Ohio-1527 (April 14, 2016)

Partners for Christian Media, Inc., Exempt No. 91234 (Tennessee State Board of Equalization April 19, 2016).

**Camps/YMCA**

Grand County Board of Commissioners v. YMCA of the Rockies, 14 CA 1767(Colorado Court of Appeals, January 14, 2016). (YMCA properties with chapel, conference facilities, dining hall, cabins, vacation home, and rooms in a lodge and cam sites are exempt as the use of the property must be considered in the light of the mission of the owner not whether the property’s use is viewed independently of the owner).

**Mega Churches**

Christ Church Pentecostal v. Tennessee State Board of Equalization, 428 S.W.3d 800 (Court of Appeals, 2013) (Exemption for physical fitness center/gymnasium and café/bookstore granted in part and denied in part).

**Pros of Exempting Religious Organization** (Condensed and extracted from ProCon.org)

Religious organizations do good things and a tax exemption is supportive but is not “an establishment of religion”.

Taxing religious organizations would unduly involve government in the affairs of the religious organization and possibly result in an ‘excessive entanglement‘.

Some religious organizations have landmark and very valuable properties on which they could not afford to pay property taxes and assessors would find it difficult to value those properties

Many religious organizations rely on contributors who give for the purpose of supporting and maintaining their properties—that support is a donation to further their religious beliefs not to give funds to the government

**Cons of Exempting Religious Organization**

A religion should have to show its charitable work to get a tax exemption as any other not-for-profit

By allowing every religious organization to get a tax exemption (in order to not prefer or establish one over another) the door is open to frivolous claims of religious belief that will involve government in reviewing and determining which should or should not be exempt

Localities and their taxpayers bear the burden of providing services to these properties without regard to where any benefits are received

Religious organizations do not have to file form 990, they do not have to disclose income and expense information or the salaries paid leaving open the door to corruption, abuse or misappropriation of funds.