

## Critical Developments in the Vow of Poverty Area and Update on Unrelated Business

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# CRITICAL DEVELOPMENTS IN THE VOW OF POVERTY AREA AND UPDATE ON UNRELATED BUSINESS

CHARLES M. WHELAN, S.J.

It's nice to be back again with you and to be here in New Orleans. The last time I was here was back in the early sixties. At that time Bishop Cody, now Cardinal Cody, was assisting in operating the diocese. He asked Bud Consedine and myself if we would have lunch with him. He had a special legal problem he wanted to discuss. At the end of his explanation of the problem, he asked Bud for his advice. Bud said: "Go to jail." It is not very often that we have to give that kind of advice to bishops, but once in a while it may be necessary.

On the unrelated business income front, there have been very few significant developments. I will just tick them off rapidly for you. Congress took care of our bingo problems and even gave us retroactive relief in that area. All seventeen of the Trappist monasteries now have private letter rulings holding the production and sale of religious articles related income. Alter breads and vestments produce related income, but the non-religious articles (like fruitcake, cheese, jams and jellies, and concrete blocks) produce unrelated income.

The letter rulings also state that the exception for "substantially all the work without compensation" (513(a)(1)) does not apply to monasteries, even though the monks and sisters have vows of poverty, because the monasteries are economically self-sustaining units. According to the IRS, that exception was never meant to apply to an economically self-sustaining unit. The exception was meant to apply to a thrift shop, or to something like that. That is a change from the IRS' position in the past. Because it is a change, the Service gave the Trappist monasteries an extra two years, so they did not have to pay tax for years beginning in 1976 or 1977.

Thirteen out of seventeen of the Trappist monasteries are quite content with this arrangement. The rulings, by the way, include a cryptic sentence permitting a deduction for maintenance costs of the monks and nuns "that are incident to the production of the unrelated income." I asked the IRS over a year ago for some further guidelines on the maintenance deduction. About a month ago, when I checked on the status of that request, I was told that they had not killed the request but that they had no intention of answering it in the near future and that I should go ahead and use my own best judgment on the scope of the maintenance deduction. Then they said "Maybe we'll see you again in a couple of years." I gather they do not want to get involved in the actual computation of the maintenance deduction until after they have seen some returns utilizing the deduction.

At any rate, four of the Trappist monasteries are now seeking rulings from the National Office that they can set up their business activities as 501(d) organizations. Congress originally created 501(d) for the benefit of the House of David, the Hutterites, the Shakers, and so on. These organizations do not enjoy the benefit of 501(c)(3) status. The corporation, while technically exempt, is taxed like a partnership. You divide up the taxable income among the members of the corporation, and each member pays the personal income tax.

In the case of a monastery with 100 monks in it, having the business income taxed that way could be advantageous. The Trappist monasteries not only live a rather frugal and austere way of life, but they frequently give away their surplus to other monasteries that are in financial need and for the support of foreign missions. Four of the monasteries have enough taxable income, figured just with the maintenance deduction, that they would still have to pay thousands of dollars in taxes. They would rather continue to give those thousands of dollars to needy monasteries and foreign missions. That is why they are exploring the possibility of the 501(d) organizations for their business enterprises. The reaction of the National Office has been very cool to this proposal, and I do not know exactly what is going to happen. There has been no formal ruling on the matter yet.

In a third area, we should all be grateful that the football income, and TV income, of institutions like Notre Dame are not going to be subject to unrelated business income tax. Those private rulings came down not so very long ago. What you may not be aware of is that the first formal ruling by the National Office was exactly the other way. The National Office sent technical advice to the district director, holding the TV income of educational institutions from their sports events to be taxable as unrelated business income. When the attorneys for the Southwestern Football Conference were informed of this technical advice, they paid a visit to one of their most distinguished and influential alumni here in

Washington. After they visited the alumnus, the National Office retracted the original advice and issued new advice holding the TV income was not taxable. Not all of our legal research is done in the library!

As for the vow of poverty, there are a number of points I want to touch on. I want to make sure I leave time for comments and questions, so I will move along rapidly.

The first point is the reason why the Diocesan Attorneys Association should be concerned with the current questions about the vow of poverty. I know that many of you represent religious orders and congregations as well as dioceses. But apart from that, the interest of the bishops in the finances of the congregations of men and women is very direct because so many of the members of these orders are receiving at least some modest payment for services rendered to the dioceses. If the IRS makes members of religious orders pay income and Social Security taxes, then of course these congregations are going to come to the bishops and ask for more money in exchange for teaching a CCD program, teaching in schools, or performing other services they are rendering in the ministries of the diocese.

Another reason is that the present tax treatment of the diocesan clergy is very different from that of members of religious orders. Archbishop Hannan is liable for the income tax on whatever compensation he receives from the archdiocese here. I am not liable for the income tax on the money that Fordham University pays me to teach Tax Exempt Organizations. That kind of arrangement certainly ought to make us say: "What religious principle is involved in this? What is the religious stake of the Church in a system where there is such a difference in treatment of the members of the diocesan clergy and the members of religious orders? Would it be a good thing or a bad thing from the religious point of view if that difference were eliminated?"

Finally, a good reason for our common concern is the impact of any IRS changes in this area on the government's concept of religion. This is a topic that has been of great concern to all of us for many years, especially the last three or four years. Some of the actions that the IRS conceivably might take in this area of the vow of poverty could affect the official legal concept of what is and is not religious.

The current focus of concern is the relationship between Revenue Ruling 77-290 and Revenue Ruling 68-123. Very briefly, just to refresh your memory, 77-290 said that if a member of a religious order was working for an institution outside of the Church to which his religious order belonged, then the compensation paid for services was the member's compensation, not the order's income, and the member had to pay both personal income and Social Security taxes. The obvious example would be my brother, Bob Drinan from the New England Province of the Jesuits. Under Revenue Ruling 77-290 his salary as a congressman would be at-

tributed to him and not to the New England Province of the Society of Jesus.

If, however, the member is working for an institution of the order or some other institution of the same church to which the order belongs, then the compensation is still attributed to the order and no personal income tax or Social Security tax is due from the member.

Therefore, to decide whether I have to pay income taxes, you ask: "For whom is he doing the work?" You don't ask: "What kind of work is he doing?" Don't ask that question. Ask: "For whom is he doing the work?" If the answer is Fordham University, then you ask: "Is Fordham University an agency of the Roman Catholic Church, or at least (in the language of the ruling) 'associated with' the Roman Catholic Church?" If it is, then the income is not attributable to me but to the Jesuits. But if I were doing at NYU or Columbia exactly the same job that I am doing at Fordham, Rev. Rul. 77-290 would make me pay personal income tax and Social Security tax.

Revenue Ruling 68-123 deals with a somewhat special situation. A sister belonged to a religious order dedicated to providing personnel in certain kinds of ministries, one of which was the health care field. The sister got a job in a hospital. The ruling does not specify whether the hospital was Catholic. As a matter of fact, it was not a Catholic hospital. In the ruling, the IRS held that, because the order had made the general arrangements for the job and continued to exercise supervision and control over the activities of the member, the income was attributable to the order, not to the member.

In one of a series of rulings on the vow of poverty during the last couple of years, the continuing validity of 68-123 was affirmed. The legal question is: What is the relationship between 77-290 and 68-123? Another way of putting it is: What is the scope of the exception in 68-123 to the general rule laid down in 77-290? Can you stretch 68-123 to cover chaplains? Can you stretch 68-123 to cover people engaged in religious counseling in non-Catholic institutions?

The exact focus of current concern is a chaplain, a member of a religious order, who has been working in a federal prison for a number of years. The particular facts of this situation are such that if a favorable ruling comes down, it would not necessarily cover all chaplains. This particular religious order has been in the ministry of supplying chaplains to prisons, and the Bureau of Prisons deals directly with this particular religious order. The priest in this case did not go out looking for a job, come back to the superior, and say "There's a prison down the road that's looking for a chaplain. I talked to the personnel officer. Is it okay with you if I take the job?" (As you all know, the situation where the individual religious goes out looking, comes back with a job offer, and gets the superior's blessing, has become somewhat frequent in recent years. But that is

not the factual situation in this particular case.) Of course, if the IRS says that even this chaplain has to pay, then all the other chaplains will have to pay — or at least, it will be the IRS' position that they have to pay. But if the IRS gives a favorable decision in this chaplain case, that does not mean that all religious order chaplains are off the hook.

The questions that have been carefully discussed with the National Office of the IRS are these:

(1) Is this particular priest an employee of the Bureau of Prisons? The Bureau of Prisons says: "Yes, he is." In fact, there is a form on which he is designated as an employee of the Bureau of Prisons.

(2) Is he an agent of the order with respect to this work? The position of the order, of course, is that he is still an agent of the order, even if he is an employee of the Bureau of Prisons.

(3) Is he an employee of the order? Is this order in the business of supplying prison chaplains, so that with respect to this particular work he is not only a member of the order, he's an employee of the order?

(4) Is the salary his income, or is the salary the order's income?

(5) Is the maintenance of this member (food, clothing, shelter, medical care, etc.) income to him within the meaning of the Internal Revenue Code? For the first time in quite a while, the National Office is actively considering the question whether the amounts spent by religious orders on behalf of their members are income to the members within the meaning of the Code.

The indications are very strong that the IRS is going to stick with 77-290 and look at the identity of the employer. Since the employer is the Federal Government, and not an agency or associated institution of the Roman Catholic Church, the IRS will insist that the priest pay income and Social Security taxes.

Counsel for this particular priest argued very strongly that there is no way that the chaplain can be an employee because what the prison wants him to do is to be a chaplain and render religious services, perform the liturgy, hear confessions, and so on. As you all know, in making the distinction between independent contractors and employees, one of the most basic tests is whether *A* has the power to direct *B* not just with respect to what is to be done but also with respect to the means, the particular details of doing what is to be done. So you can just imagine the Bureau of Prisons giving liturgical directives to this chaplain, or giving him a manual on how he ought to hear confessions, what penances he should assign, and what kind of religious advice he should give. I think there is a very substantial and somewhat novel legal question there.

The religious order, of course, denied very strongly that this chaplain is an employee of the order. The religious order also denies that any part of the maintenance expenses of this priest constitute income to the priest. Fortunately, the order, the chaplain and counsel for the chaplain have

cooperated very closely with George Reed and the Office of General Counsel. They also have kept in close touch with the General Counsel for the Leadership Conference of Women Religious and the Major Superiors of Men. So this particular case is not being handled in isolation from the Office of General Counsel, or from the legal representative of the men and women religious.

As I look at this case, the most important question is not whether the law presently requires the chaplain to pay income taxes, but rather what the religious orders and the bishops should do about this whole problem during the next ten years.

There are certain assumptions that underlie the presumed desirability of the traditional attribution of the income of members of religious orders to the orders rather than to those individuals. Certainly, one of the most basic assumptions is that this kind of tax treatment of the members of religious orders is going to result in more money for the religious orders and the Church generally than taxing those individuals personally would produce. A second assumption that has been made, I think, is that attributing the money to the order rather than to the member is more consistent with the spirituality and meaning of the vow of poverty than paying taxes would be, so that Jesuits, Franciscans, Dominicans, Sisters of Charity, and so on are somehow more religious because they do not pay income taxes than they would be if they did pay.

There are some pretty good reasons for questioning these assumptions. The most important reason is that with the decline in membership of the religious orders and the advancing average age of most of the religious orders, the financial pressures on the religious orders, especially for the health care of their members and the support of those who are no longer able to work, have become truly enormous. Many religious orders, including some of the largest ones in this country, are facing a choice that must be made in the next three or four years between supporting their members and maintaining their ministries. There simply is not enough money to do both.

These pressures go back some time, at least ten years. It was partly in response to this financial pressure that the religious orders sought a change in the Social Security system. With the help of the USCC, they were able to get a change so that religious orders could elect into the Social Security system. Of course, most of the male orders stayed out of that system. Those orders, plus the orders of women that did not elect in, are now faced with the very serious problem of trying to support their elderly members and take care of their sick members. One of the very basic questions they face is: "Is the order going to have to go into bankruptcy before any of its members can qualify for welfare?"

The idea that members of religious orders might wind up on the welfare rolls may strike some of you as absolutely appalling. It certainly does

not give any cheer to my own heart. I cannot overemphasize, however, the problems that are facing the leadership of the religious orders of men and women. Appalling as it would be to traditional ways of thought that some of these members might actually go on welfare, it would be equally appalling if all of the resources of the religious orders had to be used solely to support their own members — if the ministries of the religious orders had to be curtailed so severely that it became absolutely obvious that these orders had become simply support mechanisms for their own members, rather than rendering a very valuable service to the whole community and the whole Church.

This severe financial pressure is one major reason for reexamining the whole question of the economic relationship between the member of an order and the order itself, and the economic relationship between the member and the government. It may be that a very careful examination of the whole financial picture regarding taxation would show that by putting all members of religious orders on a taxpaying basis (personal income taxes and personal Social Security taxes), the spectre of putting members of religious orders on welfare, as well as the spectre of a tremendous curtailment in the religious ministries of the orders, could be laid to rest. I do not know what the examination would actually show, but I am satisfied that the time has definitely come for that examination to be made.

A second reason for questioning the assumptions underlying the presumed desirability of the traditional system has to do with the spiritual formation of the members of religious orders. It simply is no longer true that the men and women entering into religious orders and staying in religious orders believe that their salvation is advanced by being an economic zero and a legal nonentity. I do not mean to suggest that the younger members are saying, "We'll get to Heaven faster or higher if we pay taxes," but there are many members of religious orders, and not just among the newer recruits, who think that the maturity of the members of the religious order would be advanced if they were given more financial and legal responsibility.

In some of the recent writing in the field of spirituality of the religious orders, and particularly in the area of poverty, the emphasis has been on the notion that the vow of poverty is a very special kind of sharing and an acceptance of a very special kind of dependency. In every family there is a sharing and a dependency to a very great degree. But for those God has called to the religious, rather than family life, there is another kind of very real sharing, another kind of real dependency. The spiritual values of the vow of poverty lie in that sharing and dependency, not in the renunciation of legal capacity to acquire ownership or in a flight from legal liability for taxes. In other countries around the world, the members of religious orders have paid taxes for a long, long time. It simply does not seem to be true that religious who live in countries where

they do not have to pay taxes are better religious than those who live in countries where they do have to pay taxes.

A third consideration that suggests some reconsideration of the basic system is the situation of so many of those who leave religious orders, especially after they have been in the order for 10, 15 or 20 years. The decision those people make to change their way of life is certainly a very serious one and not one that the Church would particularly want to encourage. On the other hand, thousands of people who have given 10, 15, 20 or 25 years of their lives in very generous service to the religious orders and the Church have had their first experience of real poverty only when they left the orders. They have no savings and no pension rights. Perhaps they should have at least accrued some Social Security rights.

Although I am strongly urging serious reconsideration of the traditional tax treatment of members of religious orders, I strongly believe that, during the next 5 or 10 years we should do everything we can to preserve as much of the traditional treatment as possible. Any abrupt change in the traditional treatment is going to have a very severe impact on a number of religious orders, and is going to decrease very definitely the quantity and quality of the ministries the religious orders have been carrying on. We must employ all of the legal ingenuity and imagination that we have in order to prevent any abrupt change. We must also employ some of our legal ingenuity and imagination to think of other methods of tax treatment.

Let me suggest briefly some of the possible advantages of taxing members of religious orders like everybody else. First of all, we would get rid of the whole series of questions connected with the interpretation of Rev. Rul. 77-290. That would not be a gigantic gain, but it would be something of a gain because the questions keep coming along and could occupy a great deal of time and energy over the next few years. Secondly, we would remove the temptation that seems to be increasing on the part of some government officials to treat religious orders as employers of their members. It seems to me quite clear that it would be much, much better legally if members paid personal income taxes and Social Security taxes than for the order to wind up as an employer of its members. There are many state and federal laws whose applicability to organizations depends on the number of employees. The New York Province of the Society of Jesus, for example, has exactly three employees, but there are about a thousand members. If New York State and the Federal Government start treating the Province as the employer of a thousand persons, the legal consequences could be pretty serious.

Another possible advantage is the removal of some questions that have arisen about constitutional restrictions on payments to religious orders. For example, we go before the Internal Revenue Service and we say: "Father Whelan is just a conduit to the Jesuit Order." The IRS accepts

that, and I do not have to pay taxes. Then we go before the Attorney General of the State of New York and we say: "Oh, no, Father Whelan isn't just a conduit. After all, if he were a conduit, New York couldn't pay Father Whelan any money because such a payment would violate the New York State Constitution." The conduit theory can hurt, as well as help. When diocesan priests work for the state government, there is no conduit problem because the diocesan priests are taxpayers. The time may be ripe to eliminate the conduit question for members of religious orders.

Some of the questions in the conflict of interest area might also be resolved by treating members of religious orders as persons with full legal rights and responsibilities. The sisters, say in a hospital, have arranged things so that the head of the congregation appoints the members of the hospital corporation. She usually appoints members of the religious order, and they elect some sisters and lay people to the board of directors. The question of the contract between the religious congregation and the hospital for the services of the nursing sisters comes up. If the sisters who are members and directors are mere conduits, if they do not have any real legal individuality of their own, it would seem that the conflict of interest problems may be considerably more difficult than if the sisters are recognized as true legal persons, persons in the full sense of the law with all of the capacity of other persons and therefore with all of the liabilities of other persons.

I am not recommending that we petition Congress to tax members of religious orders. I am suggesting, most seriously, that the existing system may not be as desirable today as it was 20 years ago, and it may not be desirable at all 20 years from now. We should not exaggerate religious values implicit in the traditional tax treatment, because it was precisely in the context of the payment of a tax that Christ said: "Render unto Caesar the things that are Caesar's, and to God the things that are God's." We ought to fight to the best of our ability to prevent any abrupt change, but we should not uncritically assume that the traditional treatment is the best treatment for the future.

#### QUESTIONS TO FATHER CHARLES WHELAN

Q. John Durso of Chicago: I have one quick question. Is the status of a secular institute under these revenue rulings the same as the status of a religious order?

A. Father Whelan: As far as I know, the IRS has not drawn any distinctions between secular institutes and religious orders. There is at least a private ruling that treats the promise of poverty in a secular institute as equivalent to a vow of poverty. In some secular institutes, almost all the working members work for businesses or non-Catholic institutions.

Q. In fact, that is the mission of one of the secular institutes: to go out into the public workplace.

A. That is quite characteristic of them. Of course, under 77-290, the members are going to have to pay personal income tax and Social Security. That is the IRS' position. I did not repeat to you the arguments that we can use against 77-290 or the arguments that we can use against the Social Security tax. I do not agree wholeheartedly with what the IRS has said.

Q. I understand you are giving me the party line of the IRS. I guess my question is: Is there any challenge, as of today, to this position on behalf of the secular institutes? Or on behalf of the orders?

A. Do you know if the secular institutes belong to CMSM or LCWR?

Q. I do not think our client does, but I think some do.

A. CMSM and LCWR have retained a General Counsel. He is representing the interests of the members of those groups, and I believe there are some secular institutes in their membership.

Q. Are they going to file a suit to challenge 77-290?

A. At the time I talked to their General Counsel, there was no indication that they were thinking of filing suit. They are trying to keep this in negotiations with the IRS. The chaplain question has come to the fore; that seems to be item one on the agenda.

Q. Bill Finnegan, Archdiocese of New Orleans: Just one observation on the vow of poverty. The typical constitution of an order of religious women will call for the sister to turn over to the order the administration and income from assets that she owns. She does not turn over the full ownership of these assets, simply the administration and the right to the income from these assets. I just recently had a case that we took to the appellate division of the IRS where they wanted to tax the sister on the dividends that she received from those stocks. We did not win. They will allow us a fifty percent charitable deduction of the dividends to the Order, but they insisted that it was a nonallowable assignment of income. If she would transfer the assets themselves, then perhaps they would sustain the tax-free treatment.

A. Father Whelan: I like it when they say *maybe* if you give it away we will *recognize* that you have given the tree as well as the fruit.

Q. There was another interesting case, too, that I might pass on to you. This had to do with a diocesan priest. There is a section of the Code that says that the fair rental value of the parsonage provided to a minister of the Gospel is exempt from income tax. There is also a section that says any expenses incurred in earning tax exempt income are not deductible. For years, priests have always deducted automobile expenses, their dues, subscriptions, and things of that nature. One enterprising office audit person detected that part of the total income of this priest was in fact tax exempt, and therefore only a portion of those expenses would be al-

lowable as deductions. This is the first time I have heard of it, and I have not heard of it since. We do several priests' returns. It was just some enterprising office auditor who came in on this.

A. That is why they should keep IRS agents so busy they cannot stop to think. I have not heard that one before either.

Q. There is a Tax Court case with a Baptist minister who was receiving an automobile allowance. He wound up losing a good bit of his deduction because he is a minister of the Gospel. The Tax Court upheld the IRS' position, but there is no other jurisprudence that I could find on it.

Q. Father, suppose you have a bishop who has got an operation going with an unrelated business, and in that operation he is hiring some members of religious orders. What would you advise him about his obligations for withholding FICA and so on? How does he go about keeping himself from going to jail for not doing it? Would you mind going into that?

A. Well, my own advice would be that if it is clearly unrelated, the members of religious orders should go ahead and pay taxes. That is my personal advice. It is based on a professional judgment. It is also based, however, on a judgment that it is not worth it to the Church to play games in that area. I see no religious value to be gained from that, but other members of religious orders and some bishops might disagree with my value judgment. What 77-290 says is: "We don't care what you're doing; we do care about the religious identity of the employer." So if this unrelated business is being carried on directly by the archdiocese, or a religious order, you could make the argument it is still being carried on by a Catholic institution. I think that is pushing it pretty hard.

Q. Joe Dean from Milwaukee: A member of a religious order that is devoted to running hospitals is hired by a nonsectarian hospital as chaplain. Do you think 77-290 is the whole answer there?

A. Father Whelan: That is precisely what is being discussed now, except that it is in the context of a federal prison. Does the exception in 68-123 extend to other kinds of apostolate besides sisters who are nurses in the hospitals? We have a pretty strong argument that there is nothing in the Code that justifies restrictions of 68-123 by the IRS to work as nurses in a hospital. But the language of 77-290 says that the IRS does not care what kind of work it is. The IRS cares about the religious identity of the employer. We have to wait and see what the National Office is going to do in the case of this chaplain, and then, depending on what they do, somebody has to make a choice whether to litigate or go along with it.

Q. John Connor from the Diocese of Columbus: I represent an order of Carmelites. They make and sell altar hosts. They also have a gift shop within their community in the facility that they live in. They sell religious and nonreligious goods. Finally, they sell wine. Because of the state liquor law, one of the nuns has taken out a sales license from an Ohio winery. She sells wine to the churches, but now they want to go into retail

nonaltar sales. My question is: If the commissions on the wine sales are paid directly to the order, should the sister with the sales license have to pay income taxes?

A. Father Whelan: There are several questions here. Let us see if we can sort them out. They are very good questions. You would think you would have no problem with the altar breads. As I know I have told some of you, one of the seventeen Cistercian monasteries makes altar breads. In all the other private rulings, the IRS said that the sale of articles with religious significance in the X church (the Catholic Church) is related as an exempt function. In the ruling for the monastery that makes altar breads, the IRS said: "The sale of altar breads to institutions of the same church is related. The sale of altar breads to churches of other denominations or members of other denominations are unrelated." The advice that I have given to the monastery is to disregard that language in the ruling. But an agent who has taken the trouble to read all seventeen of the Cistercian rulings might find that language and could raise a question about sales to non-Catholics. In the gift shop, if the articles are of a religious nature in the Catholic Church, their sale is related; if they do not have religious significance in the Catholic Church, then their sale is unrelated. If it is a postcard showing a view of the city or something like that, you have to separate that out and pay taxes on it. Now, I come to the sale of wine. Our first question has to be: Is the order doing this, or is the sister doing this? I think they are all doing it. It just so happens that an individual has to take the license out. The order can not get one, so one of the sisters has taken out the license. So the order says to the state: No, we are not selling liquor. Should they then turn around to the IRS and say: She is not doing that, we are.

Q. They will admit they are doing it. The state does not care, they just want somebody to take the license out and somebody to be the distributor. It is a salesman's license. She represents the supplier. I am not really sure whether the checks are paid to her as an individual, or whether the supplier sends her checks to the order. But she is definitely on the line as a salesperson. I am sure all the nuns do it together.

A. If it is legal for the order to engage in this activity under the laws of the state, then the order still has to ask itself: What representations do we want to make to the government? Let me come to the bottom line fast, and then if we have time we can come back and go over some of the steps. An order that sells wine to people generally is engaged in an unrelated trade or business. No two ways about it. So the order is unlikely to be better off with respect to taxes by holding itself out as the seller than it would be if it let the individual sisters hold themselves out as the responsible individuals. We have to get away from the concept that everything members of religious orders do is somehow an action that, in the legal sense, is "on behalf of the order." In any event, if the sisters individ-

ually carry on this activity and they say, "Yes, we are not agents of the order," and the order says, "That is right, you are not our agents," then the sisters certainly have, according to 77-290, personal income which is taxable for income tax and Social Security. If they do not want to go to court but do want to avoid trouble, they should be filing tax returns.

Q. And if the order says, "No, we are doing it and they are acting as our agents," then the wine they sell other than to the churches produces unrelated business income. Is it possible that they could pay those taxes and the nun also would have to pay income tax?

A. The IRS might accept the order's representations if the order, in fact, was exercising real control and supervision over the sales activities of the sisters. If the order was not really exercising supervision and control, managing the finances of the business, and so on — if the sisters come home whenever they get their commissions and say, "Here, Mother Superior, this is what I got," and she says, "Thank you very much," but she does not exercise any real supervision or control — then I would expect the IRS to take the position that these sisters are acting in their individual legal capacity and that they are liable, not the order.

Q. Richard Spooner, Archdiocese of Oklahoma City: I have a question which may interest some of us. Is income from a cemetery operated by a bishop considered unrelated business income?

A. Father Whelan: No.

Q. My next question: If we sell lots to anyone, including heathens, etc., would it still be related business income?

A. I would expect the IRS to say that you would then be treated like any other cemetery association. You would not have any special treatment as a church cemetery.