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REAL PROPERTY TAX EXEMPTION—CURRENT TRENDS IN THE STATE OF NEW YORK

CHARLES J. TOBIN, ESQUIRE

It is my purpose to relate briefly some of our experiences in New York as examples of the problems pointed out in Jim Serritella's talk.

I will first outline the general provisions of the New York real property tax exemption for religious, charitable, and educational organizations, and then discuss some developments which have occurred relating directly to such exemption.

OUTLINE OF NEW YORK REAL PROPERTY TAX EXEMPTION

I ask my conferees from New York to bear with me today because we have experienced together for many years some of the matters which I will touch upon.

In New York, real property tax exemption for nonprofit organizations is provided at three separate legal levels. First of all, and happily, New York has a provision in its Constitution which prohibits the legislature from reducing or changing the exemption which exists for religious, charitable, or educational purposes. At the second level, this provision of the Constitution is implemented by statutes which provide for the exemption of property owned by religious, charitable, and educational organizations and which is used exclusively for such purposes. Lastly, a related statute provides for exemption of a long list of nonprofit organizations which are not under constitutional protection.

Churches, schools, and hospitals fall within the first two categories. In the third category there is the bulk of miscellaneous organizations, some of which, in my opinion, should be covered by the phrase "religious, charitable, and educational." For example, some years ago, "bible societies" obtained an amendment to have their specific title added as a separate classification. Thereafter, when legislation separated the constitutionally protected and the non-constitutionally protected properties, the

“bible societies” were put in the latter category. Even though they could argue effectively that they were covered by the religious exemption, the fact that they were a special class resulted in their being placed in the unprotected category. As a consequence, a major bible society has been held to be taxable because it is not directly related to an established religion. A similar consequence occurred for the YMCA’s because they also set up a special class. When the categories were divided, the YMCA’s, under the phrase “moral and mental improvement to children,” were classified in the unprotected category.

We are fortunate that “religious, charitable, and educational” are protected under the Constitution because the New York statutory law permits municipalities to tax those organizations which are not within the definition of religious, charitable, and educational.

In New York, the Catholic dioceses adhered to the language of the Constitution almost to a fault. One example relates to the subject of rectories and parsonages. We have insisted that we should always seek our exemption under the word “religious.” Even though we have a separate section in our law which specifically exempts “parsonages,” we do not apply for exemption under that section but rather, we apply under the section that exempts property for religious purposes. Sometimes, if we receive an objection from an assessor, we yield and file under both sections, but we never cease filing under the “religious” exemption because it enjoys the constitutional protection.

The New York courts have created some confusion with respect to the basic law of New York concerning those simple words and the simple concept of tax exemption. In New York, when we talk about “exclusively,” we mean “primarily,” and when we mean “primarily,” one can really go a long way before losing the “exclusively” status. Of course, we must prove “exclusively” to obtain exemption, but we can divide a piece of property in New York and have part of it exempt and have part of it nonexempt. This has assisted us in developing clear-cut distinctions between exempt and nonexempt uses.

We have seen the New York courts, in their confusion, give a liberal interpretation to exemption with respect to the religious, charitable, and educational categories. They tend to be restrictive, however, when they examine the nonprotected categories of exemptions. For example, this past year our highest court held that a hotel which transferred twenty-five acres of land adjacent to the hotel complex to a foundation, was entitled to total exemption as “charitable” because the foundation permitted people to enter upon the land, to hike over it, and to camp on it. This liberal judicial interpretation runs counter to the positions we have experienced in the legislature. The courts are saying they will interpret the words broadly, and if the law is to be changed, it is up to the legislature to change it.

RECENT DEVELOPMENTS IN NEW YORK

In New York, some problems with respect to the use of tax exempt properties have occurred. We can refer to the case of *In re Mary Immaculate School of Eagle Park v. Wilson*,¹ because it is typical of the kind of problem that can arise when a church changes the use of buildings. In this case, a large school operated by a religious order with twenty classrooms, a convent, and a large tract of land used for athletic purposes, determined that it would cease operation and place the property on the market for sale. It hired a developer to explore future uses and made an energetic effort to find a buyer. In addition, it also sought a zoning change. As a result of the effort made to sell, the town determined that the property was no longer being used for exempt purposes and placed it on the tax rolls. Unfortunately, the administrators had not paid close attention to the assessed values and the taxes on the property were astronomical. After substantial litigation, the school was able to convince the courts that even though the property was not in its totality being used for exempt purposes, there were some exempt activities. As a consequence, the courts allowed the exemption to stand. The experience was costly, however, and the outcome might not have been so favorable.

UNIVERSAL LIFE CHURCH "MINISTERS"

A significant development in New York has been the impact on tax exemption policy of efforts by so-called ministers of the Universal Life Church to obtain tax exemption on property which they occupy as their personal residences. These mail-order ministers have become such by sending \$5 to obtain a certificate as a minister in the Universal Life Church. The stated purpose of the church is to demonstrate that tax exemption is a fraud upon the American people. There is no other stated purpose of the organization.

The ministers have made use of a section in the New York real property tax law which protected the exemption of a religious organization where the property was in the ownership of an officer of that organization.

I have learned that this statute was enacted in the 19th century when Catholic churches were not able to incorporate, so their property was placed in the name of the bishop, to be held by him. This unique statute enabled the churches to have an exempt status without being incorporated. The statute has not been used for many years.

The mail-order ministers took advantage of the statute. There has been litigation, challenges in the legislature and other efforts which put

¹ 73 App. Div. 2d 969, 424 N.Y.S.2d 251 (2d Dep't 1980).

tax exemptions on the defensive. We supported an amendment to the statute which will prevent its future abuse and now we have found that the mail-order ministers are seeking to obtain exemption on the theory that their homes are parsonages.

UNIFICATION CHURCH

Another area of concern that we have had involves the Unification Church. Rev. Moon has made his principal headquarters in New York State, purchasing several large properties for which he has sought tax exemption. The communities have fought his status as a religion and this has precipitated major confrontation over the issue of tax exemption for religious organizations. While we have not been directly involved, we are certain to suffer from the aftereffect. The legislature has asked the established religious groups for aid in doing something about this problem. We continue to face serious political pressures arising from the efforts of such groups as the mail-order ministers and the Unification Church.

ANNUAL REPORT FORMS

One of the most difficult and time-consuming effects of these tax exemption problems has been the determination by New York State that all tax-exempt properties file new applications for tax exemption. While we have always filed a request for tax exemption upon the acquisition of the property, it had usually been a casual form letter with some detail on the use. The local assessor would generally grant the request upon the reputation of the applicant.

In recent years, in New York City, a form of application was developed which was somewhat more detailed. When the problem arose whether the mail-order ministers and Rev. Moon were entitled to exemption, the state officials determined that they would need more information about the organizations and the property use. This simple determination has had a devastating effect on the dioceses in New York because they own thousands of separate parcels of real property.

We succeeded in narrowing the process by reducing the number of the questions, but not the number of returns. The officials would only accept a plan which provided for a separate form for every parcel that was on the assessment roll. There was some validity to this requirement because the state was putting all real property into a computerized system and they needed a record of each parcel. As a consequence, every diocese in New York returned two separate forms to the appropriate assessing officer during the period from March through July, one for organizational status and one for use status with respect to every separate piece of real property.

One of the techniques used to minimize the problem was to simplify

the organizational form by linking it to our status under section 501(c)(3) of the Internal Revenue Code.² We arranged for the form to provide a means to indicate coverage by the group ruling as fulfilling the organizational test.

For the determination of use, we had another problem. We reviewed the type of parcels and we set up a format to respond for each type. Ninety-five percent of the parcels were simple because the church, rectory, or school were located on them.

We have now achieved an accepted data base of exemption; new approval is granted in the process and we are steps ahead. We have reestablished our exemption and we now file an annual form for each parcel, stating that there is no change with respect to the parcel.

While no one is happy with the bureaucratic process, we do feel that we have derived some advantages. We have made a contribution to the effort of government to limit exemption to those entitled to it. Effective administration is good for us because we know it will mean that organizations not entitled to exemption will not be harming tax exemption generally.

There are one or two other items that are considered to be significant developments in New York.

SERVICE CHARGES

We have a pending service charge law. It does not, however, apply to the constitutionally exempt organizations. While we are concerned about it, we do not say very much about it because it does not apply to us. We have been delighted that the legislature has postponed its effective date every year for 10 years, because the biggest taxpayer under the proposed law would be the State of New York. The state computes that it would have to pay \$400 million a year in service charges under the law and therefore it has repeatedly postponed the date.

NEW TAX EXEMPT CLASSES

The next item is the growth of tax exemption. While there are not many new churches and schools being built, the growth of tax exemption in its totality is significant. Again, our voice is muted because the new exemptions have good objectives. The elderly now have new tax exemptions. We have tax exemption for property owned by persons with low income, for publicly or privately owned housing, for rehabilitation of cities, and for business development.

As a matter of fact, when one looks at religious tax exemption, one

² I.R.C. § 501(c)(3).

will recognize that we really are a very small part of the totality of tax exemption. A study some years ago indicated that in New York City religious tax exemption only comprised five percent of total tax exemption. All private exemption only comprised twelve percent of all tax exemption. The great bulk of tax exemption in New York City was public tax exemption made up of city parks, city utilities, city water systems and the like.

In the public debate, when we hear about how much tax exemption there is in the City of New York, we always hear that there is \$30 billion worth of tax exempt property in New York City, such as St. Patrick's Cathedral. Well, of course, St. Patrick's is a miniscule amount of tax exemption compared to Central Park, which is tax exempt. No one mentions Central Park when they talk about tax exemption; they only talk about highly visible church institutions.

LEGISLATIVE ISSUES

We have had in the past several years many interesting legislative issues in the tax exemption field. Some examples are:

(a) proposals to limit the number of vacant acres that an organization can have tax exempt (i.e., fifty acres or five acres);

(b) proposals to define "religion";

(c) proposals with respect to federal and state funded institutions (under which tax exemption can be denied for a hospital, for example, because most of the income that the hospital receives comes from medicaid or third party payors) so that the institution will not have a problem paying real property taxes. That kind of an argument enjoys great status in the public debate today and we are going to be hearing more about it.

(d) One of the areas of legislative action that we are deeply interested in is the concept of municipal overburden. We recognize that there are communities in the state with very high percentages of exempt property. For example, this municipal overburdening may occur in a town where there is a state mental hospital which may be worth more, in assessed value, than the rest of the town. We find real justification in developing formulas for state sharing of costs of the local government in those cases, over and above normal state aid. We should support adequate programs to meet municipal overburden.

(e) Lastly, we must note that government occasionally seeks ways of making payments in lieu of taxes. This is a type of generosity which I think we should try to discourage because it erodes the validity of exemption for organizations carrying on a public purpose. When government says it will start paying in lieu of taxes, they are creating serious problems for us.

I wish that I had more time to outline some of the other problems which we have faced in New York and particularly, I am disappointed about not having the opportunity to review with you some of the steps

which we might take to protect tax exemption. Perhaps, we can discuss them on another occasion.

Thank you.