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## OGC Issues Roundtable

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# OGC ISSUES ROUNDTABLE

DEIRDRE HALLORAN, Esq., NCCB/USCC

This afternoon my colleagues and I would like to speak with you in an informal manner. Each staff member will briefly discuss the hot issues in his or her area of expertise.

Carlos Ortiz Miranda handles immigration matters; Phil Harris specializes in litigation; John Liekweg, education and miscellaneous employment matters; Katherine Grincewich, communications; and Helen Alvare, litigation and pro-life. I specialize in tax.

This has been a very difficult year for tax-exempt organizations. I would like to identify five areas to which you should pay particular attention.

The first is the Revenue Act of 1987,<sup>1</sup> which contains a number of provisions that affect tax-exempt organizations. There are a number of provisions I would like to run through and then I would ask you to review the material at your leisure.

IRS Notice 835 describes some changes to the political activity restrictions. The Act clarified the meaning of participation in a political campaign to include opposition to a political candidate. That change did nothing more than codify what was already in the regulations. However, the Act also added some substantial penalties for violation of the political activity restriction. First of all, the Act imposed a two-tiered excise tax on the exempt organization and its managers for political expenditures. It also gave the IRS injunctive relief and allowed immediate assessment of tax for organizations engaged in flagrant political expenditures.

In addition, the Act required public inspection of Form 990 exemption applications, and determination letters. The public has the right to come into an exempt organization and inspect the last three Form 990s the organization has filed, their exemption applications and their IRS determination letters.

With respect to Church organizations, most of which are covered under the group ruling, they have not filed exemption applications and

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<sup>1</sup> Revenue Act of 1987, Pub. L. No. 100-203, 101 Stat. 1330-82 (codified as amended in scattered sections of 26 U.S.C.).

their IRS determination letter is the USCC group ruling letter. We have instructed organizations (in *Law Briefs*) to inform anybody who inquires that they are not required to file the Form 1023 and to offer a copy of the group ruling. Any further questions should be referred to our office.

With respect to form 990, you are on your own. For the organizations that are required to file the 990, it must be made available to anyone from the public who comes into the organization during business hours and asks to see it.

Another hot issue this year has been unrelated trade or business. The Subcommittee on Oversight of the House Ways and Means Committee held six days of hearings last year. The Subcommittee issued discussion options at the end of March. I ask you to study them carefully and attempt to determine how they will affect your organizations. I ask that you send any comments you might have on the impact of any of these proposals to me so that we can respond on a national level.

We have an unrelated business income tax committee of the Diocesan Attorneys Association and this group will review all of your comments and take them to heart. From what I hear, the legislative climate is not good. We may be in trouble on some of these issues. However, in order to lobby against them we need to have some facts and figures as to how they would affect our organizations.

Another issue that spells "trouble" is the employment status of priests. The IRS has instituted a nationwide collection program to identify employers who are misclassifying their employees as independent contractors. Although priests can be expected to be caught in this web, they are not the targets of this investigation. The IRS has 400 agents working on this issue. Relevant to this issue is our 1982 memo on the employment status of priests. Some of the tax law is dated, but the basic conclusion is sound: we have to look at the common law tests for employee/employer status and determine whether the priests are in fact employees.

In the past, the main issue was whether the diocese or employing institution should file a Form W2 or a Form 1099. The focus has changed a little bit and that is why the IRS is interested. Since the Tax Reform Act of 1986,<sup>2</sup> self-employment status and use of the Schedule C is relatively more attractive because a number of the deductions that employees used to be able to take on their Form 1040s are no longer available. Thus, the IRS's interest is driven by the income tax potential with respect to persons who are misclassified as independent contractors.

A related issue is the social security status of priests. As you know,

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<sup>2</sup> Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (codified as amended in scattered sections of 19, 25, 26, 28, 29, 42, 46, and 49 U.S.C.).

April 15, 1988 was the deadline for priests who are currently out of the social security system to opt back into the social security system. I have received a number of calls from people across the country concerning priests who filed to reenter the system, but had their forms returned because the IRS had no record that they had ever opted out of the system. Hence, the IRS is saying, "If you never opted out of the system, you are still in the system and can't opt back into the system." The real issue is past tax liability. I have heard of some cases where the IRS has gone back three years in an attempt to collect self-employment tax from the priests. This may or may not be a bad thing. Some who need income-quarters are happy to pay the tax so they can be eligible to collect social security benefits. I would like to hear from you if you have horror stories or good results to share in this area.

Finally, I would like to tell you about our Pension Committee. This is a subcommittee of the Diocesan Attorneys Association. The members are Dan Wentz from Omaha, Jim Serritella and Joan Brophy from Chicago, Pat Fitzgerald from Miami, Paulette Furness from Newark, and Bill Hurley from New York. The Committee is attempting to gather data about Church pension plans and other retirement arrangements hoping to bring some order to this area, possibly suggesting legislative improvements, and, at the very least, making a presentation at the meeting in Orlando next year. For your part, I would ask that you summarize in writing any administrative or legal problems you may have with your pension plans, and mail them to me or any of the other committee members. We would like to put together a library of issues so we know where the major problems lie and where we should concentrate our efforts.