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## Proposed Treasury Department Definition of Church

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## Proposed Treasury Department Definition of Church

The Federal Register for January 21, 1956 carried notice of the proposed Treasury regulations dealing with the taxation of exempt organizations.<sup>1</sup> Unlike the regulations promulgated pursuant to the unrelated business income tax provisions contained in the 1939 Internal Revenue Code,<sup>2</sup> the proposed regulations contained specific provisions dealing expressly with the characterization of "Church" for income tax purposes.

The pertinent proposed regulation is as follows:

§1.511-2 *Organizations subject to tax. . . .*

(3) (i) Churches and associations or conventions of churches are exempt from the tax imposed by section 511. The exemption is applicable only to an organization which itself is a church or an association or convention of churches. Subject to the provisions of (ii), religious organizations, including religious orders, if not themselves churches or associations or conventions of churches, and all other organizations which are organized or operated under church auspices, are subject to the tax imposed by section 511, whether or not they engage in religious, educational, or charitable activities approved by a church.

(ii) The term "church" includes a religious order or a religious organization if such order or organization (a) is an integral part of a church, and (b) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise. In determining whether a religious order or organization is an integral part of a church, consideration will be given to the degree to which it is connected with, and controlled by, such church. A religious order or organization shall be considered to be engaged in carrying out the functions of a church if its duties include the ministration of sacerdotal functions and the conduct of religious worship. If a religious order or organization is not an integral part of a church, or if such an order or organization is not authorized to carry out the functions of a church (ministration of sacerdotal functions and conduct of religious worship) then it is subject to the tax imposed by section 511 whether or not it engages in religious, educational, or charitable activities approved by a church. What constitutes the conduct of religious worship or the ministration of sacerdotal functions depends on the tenets and practices of a particular religious body constituting a church. If a religious order or organization can fully meet the requirements stated in this subdivision, exemption from the tax imposed by section 511 will apply to all its activities, including those which it conducts through a separate corporation or other separate entity which it wholly owns and which is not operated for the primary purpose of carrying on

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<sup>1</sup> Int. Rev. Code of 1954, §§501-526.

<sup>2</sup> U.S. Treas. Reg. 118, §39.421-2 (a)-3 (1950); cf. *Concept of Church in the 1954 Internal Revenue Code*, 1 CATHOLIC LAWYER 27, 29 (1955).

a trade or business for profit. Such exemption from tax will also apply to activities conducted through a separate corporation or other separate entity which is wholly owned by more than one religious order or organization, if all such orders or organizations fully meet the requirements stated in this subdivision and if such corporation or other entity is not operated for the primary purpose of carrying on a trade or business for profit.<sup>3</sup>

• While in terms the regulation only applies to "Church" as contained in section 511 relating to exemptions from the unrelated business income tax, the characterization will undoubtedly apply to the term as used in section 170 (b) (1) (A) (i) dealing with the special percentage limitation for charitable contributions to a church.

These regulations are, of course, merely tentative.

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<sup>3</sup> 21 Fed. Reg. 471 (1956).

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## POSTSCRIPTS (*continued*)

able care in the selection or retention of a servant." [*Lyon v. Turnwater Evangelical Free Church*, — Wash. —, 287 P. 2d 128 (1955)].

The defendant transported children without charge, to and from Sunday school, in order that they might receive spiritual education and eventually become members of the church organization. The infant plaintiff was severely injured by a log which came through the window of the bus and

struck him. The plaintiff contended that the rule of charitable immunity had been rejected in *Pierce v. Yakima Valley Memorial Association*, 43 Wash. 2d 162, 260 P. 2d 765 (1953) which held a hospital liable for injuries to *paying* patients caused by negligence of employees of the hospital. See 1 CATHOLIC LAWYER 329, 331 (Oct. 1955). The Supreme Court specifically rejected the plaintiff's contention and limited the *Pierce* case to its own facts.

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## *St. Thomas More*

*Born February 6, 1478*

*Lord Chancellor of England 1529-32*

*Martyred for the Faith July 6, 1535*

### **PRAYER FOR LAWYERS**

St. Thomas More, be our advocate and counsel before the Divine tribunal that alone is without error. Bespeak for us the wisdom to apply the precepts of God's eternal law to the problems of our daily practice. Intercede for us that we may emulate the sense of humor which made your heart echo with the mirth of heaven.

Pray that we may spurn false oaths and live as you did, faithful to our trust as members of the Bar, even though by doing so we may be called upon to sacrifice our lives as you sacrificed yours.

These things seek for us through the merits of Jesus Christ, Our Lord. Amen.

NIHIL OBSTAT  
Thomas W. Smiddy, S.T.L. Censor Librorum  
IMPRIMATUR:  
†Thomas Edmundus Molloy, S.T.D.  
Archiepiscopus-Episcopus Brooklynensis  
BROOKLYNII Die xxiii Martii, 1954

THE CATHOLIC LAWYER

“[Never during trying days did District Attorney of Kings County, N. Y., Miles F. McDonald] forget that divine guidance was available. When the obstacles seemed higher than humans could climb, when it seemed as though victory would never be his, McDonald looked at the picture of the patron saint, Thomas More, and repeated to himself the [above] prayer he had written in honor of the one-time political leader.” Mockridge and Prall, *The Big Fix*, page 225 (1954).

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*In response to a number of requests, these St. Thomas More Prayer Cards have been made available by THE CATHOLIC LAWYER at a \$1.75 for 50 and \$3.00 for 100.*