

December 2016

Joint Statement of the NCC and the USCC Regarding Tax Reforms

Follow this and additional works at: <http://scholarship.law.stjohns.edu/tcl>



Part of the [Religion Commons](#), and the [Taxation-Federal Commons](#)

Recommended Citation

(2016) "Joint Statement of the NCC and the USCC Regarding Tax Reforms," *The Catholic Lawyer*: Vol. 15 : No. 2 , Article 4.
Available at: <http://scholarship.law.stjohns.edu/tcl/vol15/iss2/4>

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact cerjanm@stjohns.edu.

JOINT STATEMENT OF THE NCC AND THE USCC REGARDING TAX REFORMS*

Under existing law many types of organizations are granted exemption from the income tax. Certain exempt organizations, including charitable, educational, and some religious organizations, labor unions, business leagues, etc., are nevertheless subjected to tax upon their incomes from any unrelated business; and rents derived from debt-financed property (under leases for periods *in excess of five years*) are included in unrelated—business taxable income. The tax upon unrelated business taxable income does not apply to churches, or conventions or associations of churches.

Such exemption makes available to churches a potential advantage over tax-paying organizations engaged in commercial business activities. The National Council of Churches and the United States Catholic Conference favor elimination of the specific exemption of churches from taxation on income from *regularly* conducted commercial business activities, which are unrelated to their exempt functions.

Ingenious tax planning on the part of some exempt organizations which are subject to the unrelated business tax has enabled them to purchase a business on credit, lease its assets to an operator for *five years or less*, receive the business profits as rent and use such rent to pay the purchase price. The operator pays little or no tax, the exempt organization pays no tax, and the seller reports his profit at capital gain rates. This is the so-called “Clay-Brown” loophole. Being exempt from the unrelated business tax, a church desiring to engage in commercial business activity has not needed to resort to this technique.

* Submitted to the House Ways and Means Committee on May 2, 1969.

The National Council of Churches and the United States Catholic Conference we represent, also favor elimination of the "Clay-Brown" loophole.

In order to close the "Clay-Brown" loophole the Treasury recommends that *ALL* exempt organizations, *including churches*, be subjected to taxation upon dividends, interest, rents, royalties and capital gains to the extent that such income is derived from debt-financed property. That proposal goes far beyond a cure of the abuse involved. We cannot and do not speak for the other exempt organizations, but with respect to churches, the National Council of Churches and the United States Catholic Conference believe that the "Clay-Brown" problem can be cured by taxing debt-financed rents. In this connection, rentals from property acquired for expansion, within or without the church neighborhood, and held for a reasonable period (10 to 15 years) before conversion to church use should not be subject to taxation.

The changes, to accomplish these policies, should carry provisions to: (a) provide adequate procedural safeguards to prevent governmental involvement in the internal and financial affairs of churches; (b) preserve the present exemption of churches from taxation upon passive or investment income, including royalties, dividends, interest, gains from the disposition of property, and rents (but rents to be taxable to the extent necessary to eliminate the "Clay-Brown" loophole); (c) protect from taxation the traditional functions of churches, including, among others, the printing and distribution of religious publications with or without advertising and customary fund-raising activities; and (d) provide a five-year grace period for the divestiture of *existing* unrelated business activities.

There have been suggestions for compulsory filing of financial data by all exempt organizations, including churches. Financial reporting by churches should be on a *voluntary* basis. We do not consider that it is desirable or wise for Government to *compel* disclosure of financial information by churches. Only those churches which conduct an unrelated trade or business should be obliged *by law* to file tax reports and then only with respect to such business activity.