Both programs, it was held, constituted public financial assistance to sectarian institutions with no attempt to segregate the benefits so that religion was not advanced.[122]

New York had also enacted a separate program providing tax relief for low-income parents who did not qualify for the tuition reimbursements; here relief was in the form of a deduction or credit bearing no relationship to the amounts of tuition paid, but keyed instead to adjusted gross income. This too was invalidated in *Nyquist*. "In practical terms there would appear to be little difference, for purposes of determining whether such aid has the effect of advancing religion, between the tax benefit allowed here and the tuition [reimbursement] grant. . . . The qualifying parent under either program receives the same form of encouragement and reward for sending his children to nonpublic schools. The only difference is that one parent receives an actual cash payment while the other is allowed to reduce by an arbitrary amount the sum he would otherwise be obliged to pay over to the State. We see no answer to Judge Hays' dissenting statement below that '[i]n both instances the money involved represents a charge made upon the state for the purpose of religious education.'"[123] Some difficulty, however, was experienced in distinguishing this program from the tax exemption approved in *Walz*.[124]

The Court rejected two subsidiary arguments in these cases. The first, in the New York case, was that the tuition reimbursement program promoted the free exercise of religion in that it permitted low-income parents desiring to send their children to school in accordance with their religious views to do so. The Court agreed that "tension inevitably exists between the Free Exercise and the Establishment Clauses," but explained that the tension is ordinarily resolved through application of the "neutrality" principle: government may neither advance nor inhibit religion. The tuition program inescapably advanced religion and thereby violated this prin-

---

[122] Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 789–798 (1973) (New York); Sloan v. Lemon, 413 U.S. 825 (1973) (Pennsylvania). The Court distinguished *Everson* and *Allen* on the grounds that in those cases the aid was given to all children and their parents and that the aid was in any event religiously neutral, so that any assistance to religion was purely incidental. 413 U.S. at 781–82. Chief Justice Burger thought that *Everson* and *Allen* were controlling. Id. at 798.

[123] Committee for Public Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 790–91 (1973).

[124] 413 U.S. at 791–94. Principally, *Walz* was said to be different because of the longstanding nature of the property tax exemption it dealt with, because the *Walz* exemption was granted in the spirit of neutrality whereas the tax credit under consideration was not, and the fact that the *Walz* exemption promoted less entanglement whereas the credit would promote more.