

## POSITION PAPERS

### **III. TAXATION AND THE CHURCH**

by Thomas O. Kotouc

#### The Biblical Position

When dealing with taxation, Jesus commanded us to “[r]ender unto Caesar the things that are Caesar's and unto God the things that are God's.” Matthew 22:21. Here Jesus as Head of the Church acknowledged His individual obligation to pay the poll tax to Caesar.

Although there is no reference in the New Testament to the Church as an institution paying taxes, historically the Church, and before it the Temple, and those who ministered in the House of God (including singers and porters) were exempt from “toll, tribute or custom.” Ezra 7:24. As we shall see, this exemption continued through the Roman times, the Constantinian settlement, and into the Twentieth Century. The biblical rationale for the Church's exemption lies in Leviticus 27:30: the tithe belongs to the Lord. Leviticus 27:30.<sup>29</sup> Thus, when Caesar requires the church to pay a tax on the tithe, Caesar is actually taxing the Lord Jesus Christ.<sup>30</sup>

#### I. The Historical Exemption of the Church from Jurisdiction of the State

Both the Church and the civil government are under the authority of God. “[T]here is no authority except from God, and those which exist or are established by God.” Romans 13:1. The Church like the government has but one sovereign, the Lord Jesus Christ. Therefore, the Church should not pay tax to the State even as the State need not support the Church and its ministers.

In the Roman Empire, when the Church first came into prominence, it was treated by the Roman civil authorities as a legitimate Jewish sect, and as such, the Church, like the Jewish religion, was exempt from taxation.<sup>31</sup>

When Constantine made Christianity the official state religion, the civil government had absolutely no authority to tax churches. The Constantinian settlement recognized that churches were already tax exempt by virtue of the fact that they paid taxes (tithes and offerings) to their Head, Jesus Christ, while the state paid taxes to its temporal head, Caesar and his successors. This settlement was later backed up by the influential Theodosian and Justinian Codes which had so much authority in shaping legislation in all the Christian countries of medieval Europe.<sup>32</sup>

Even during the time of King Henry VIII and during the French Revolution, although the civil government forcibly closed down monasteries and confiscated their lands and wealth, civil authorities did not attempt to tax churches. Closing the

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29       “All the tithe of the land, of the seed of the land or of the fruit of the tree, is the Lord's; it is holy to the Lord.” Leviticus 27:30.

30       Both Harold O. J. Brown and R. J. Rushdoony believe that tithes should not be taxed.

31       When Jerusalem fell in 70 A.D., it and the Church were no longer exempt from taxation. The Emperor wanted Christians to swear to him as final lord over all (including the Church) and to sacrifice to him as being the world's center of unity. See Douglas F. Kelly, “Who Makes Churches Tax Exempt?” Chalcedon Report, August, 1982.

32       One exception to this practice was in medieval Europe during the crusades when the Church itself asked the civil authorities to tax church income in order to finance the crusades. See C. W. Previte-Orton, *The Shorter Cambridge Medieval History*, (Cambridge: At The University Press 1971), p. 618.

monasteries (as they saw it) was a police action because the monasteries were dens of corruption and a hazard to the well-being of the nation.

Instead, civil government exempted even church businesses and lands from taxation because monasteries and other branches of the Church were historically seen as caring for the sick and the poor. Even after Henry VIII established himself as head over the church and the concept of a free state and a free church evolved, the Church was still seen in England and Europe as owing allegiance to its Sovereign alone. This understanding was carried into the colonies where nine had established state churches at the time of the Revolution (and six at the time the Constitution was adopted). Only with the late 18th Century Humanist Enlightenment did some states (as France in 1789) begin to claim sovereignty including financial control over the Church. The United States was already a free country by this time, however, with its own Constitution rooted—not in the Humanist Enlightenment—but in the earlier medieval, Reformation Christian order.

Only when the same Humanist Enlightenment reached the American shores in the late 19th Century, did secularists begin to view the Church “as nothing more than a collection of individuals having no greater rights than the aggregate liberties of its individual members.”<sup>33</sup>

## II. The Individual Christian is Subject to Two Jurisdictions

There is no question that the individual Christian citizen is subject to both the civil government and to the Church. He pays tithes to God which are held by God but administered by the local congregation or church. He pays taxes to the civil government in obedience to Romans 13:7 in support of the civil government which God has established.

The head tax, for example, was commanded in Scripture for the service of the tent of meeting. It was paid by every male citizen over twenty years of age including the Levites and priests. The tax was not graduated in terms of ability to pay: everyone, rich or poor, paid the one-half shekel of silver (about one-fifth of an ounce). Exodus 30:11-16. This was also known as the “temple tax.”

Jesus declared that he was exempt from this tax as a Son. However, he did not declare that the tax was in any way improper and paid it for both himself and Peter. Matthew 17:24-27.<sup>34</sup>

However, the civil government may intervene in relations between members of the church even on church property when a member seeks to take the life or property of another. When Adonijah sought to usurp his authority by taking Abishag, David’s concubine, as a wife, Solomon not only ordered Adonijah’s death, but commanded that Joab be slain beside the altar in the tent of the Lord where he had fled, for Joab supported Adonijah. I Kings 2: 29-34.<sup>35</sup>

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33 “[T]he issue which divides, then, is that secularists do not give assent to the divine origin and nature of the Church.... Thus, separation of church and state, which began in part to protect the church, ironically has turned on its head and become a tool for confining the Church.” Carl H. Esbeck, “Toward a General Theory of Church-State Relations and the First Amendment,” IV *Public Law Forum* (1985), pp. 328-29.

34 Some believe this tax was collected by the civil government.

35 The reason Solomon did not kill Adonijah earlier in I Kings 1:50-53 when he fled to the horns of the altar for refuge seemed to depend more on his worthiness than the place where he was seeking refuge.

III. The Limited Role of Civil Government

Thus, civil government does not biblically and has not historically had the authority to tax the tithes of God's people. Romans 13 teaches that government's legitimate role is to avenge those who practice evil as a minister of God, praise those who do good, and collect taxes as God's servant. Romans 13:4-6. The *Westminster Confession of Faith* Chapter 23 "Of the Civil Magistrate" agrees:

God, the Supreme Lord and King of all the world, hath ordained civil magistrates to be under Him over the people, for His own glory, and the public good; and to this end, hath armed them with the power of the sword, for the defense and encouragement of them that are good, and for the punishment of evil-doers. ... It is the duty of the people ... to pay them tribute or other dues. (Emphasis added.)

This authority of civil government is to be honored, however, even when the government oversteps its clearly limited sphere of punishing evil and rewarding good. Charles Hodge in his commentary on the *Epistle to the Romans*, 405 (1886), points out that

[i]t is a very unnatural interpretation which makes [the] word [magistrates] refer to the character of the magistrates, as though the sense were, "Be subject to good magistrates." This is contrary to the usage of the term, and inconsistent with the context. Obedience is not enjoined on the ground of the personal merit of those in authority, but on the ground of their official station.

The prophet Samuel noted that the king for whom the people asked would become a tyrant over the people because he extracted the tithe from them. I Samuel 8:15-17.<sup>36</sup> Yet Samuel did not state that this excessive taxation would be a basis for civil disobedience.

IV. Recent Attacks on the American Church's Tax Exemption

Churches have traditionally objected to and successfully resisted taxes on church-owned land or property. In *Walz v. Tax Commission of New York*, 97 U.S. 664 (1970), the Supreme Court of the United States held that a New York City property tax exemption of church real estate would not violate the Establishment Clause since "elimination of exemption would tend to expand the involvement of government by giving rise to tax evaluation of church property, tax liens, tax foreclosures and the direct confrontations and conflicts that follow in the train of those legal processes."<sup>37</sup>

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Solomon said, "[if Adonijah] will be a worthy man, not one of his hairs will fall to the ground; but if wickedness is found in him, he will die." 1 Kings 1:52.

There is no question that a man who had accidentally shed blood could flee to a city of refuge for safety from his avenger. Numbers 35:6-15. However, these cities are part of the judicial laws and seem unconnected with a temple or sanctuary being located in the cities.

36 David Chilton, *Productive Christians in an Age of Guilt Manipulators* (1981), p. 70. Although Samuel did not specify the amount of taxation that he considered the upward Biblical limit, the passage indicates that in his thinking even a tithe or 10% of the income would be oppressive.

37 *Walz v. Tax Commission*, 97 U.S. 664, 674 (1970). "Few concepts are more deeply imbedded in the fabric of our national life beginning with pre-revolutionary colonial times, than for government to

However, with the breakdown of the historical exemption of church from government taxing authority, the state has attempted to tax the church as it would any corporation or business. Many states, for example, collect sales or use taxes from churches on construction materials used in their buildings, on materials and equipment purchased for the church, and on sales by church-run bookstores.<sup>38</sup> These taxes are paid without apparent objection from the church. Since the church uses the tithe to pay this tax, however, it may legitimately object to this tax as it does to property taxes levied on its sanctuary.

Some commentators see a sales tax as a tax on commerce, but not on the church. Similarly, a sewer levy may be seen as payment for services, rather than a tax.

Some churches have resisted the imposition of workmen's compensation and state unemployment taxes which would be paid out of the tithe. Other churches have resisted inquiry by Internal Revenue Service as to the amount of donations made by individuals.<sup>39</sup>

When the federal government recently attempted to assess social security taxes on church employees, some churches have protested the civil government's taxing of churches for the employer's share of social security taxes:

Social security does not fall within the boundaries of legitimate duties of the civil magistrate, and neither finances the defense of the people, nor does it provide conditions conducive for the encouragement of good. It is not the government's duty to provide for the retirement of its citizens. The Lord God requires of each individual under His authority to provide for himself and his family. (Proverbs 6:6-11, II Thessalonians 3:6-10, I Timothy 5:8.) One of the functions of a genuine church, according to the Scriptures, is to carry on a ministry of compassion and mercy to the people in need. Deacon boards should address themselves to the needs of the community in which they live. The church and other volunteeristic organizations should carry on ministries of mercy to people who are in need during their retirement years. This is not the duty of the civil government.<sup>40</sup>

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exercise at the very least this kind of benevolent neutrality toward churches and religious exercise generally so long as none was favored over others and none suffered interference.” *Id.* at 676-77.

38 Some 34 states exempt churches and their purchasers completely or to some extent from sales and use taxes. Some 25 states also exempt church sales to some extent.

39 See page 14 of the Preamble to this paper.

40 Roland S. Barnes, *PCA Messenger* 4 (October 1984), p. 4. Congress has recognized this conflict and has allowed pastors who certify within two years of their ordination (or the due date for the tax return for the second year in which a pastor receives ministerial income) to exempt out of the social security program if they certify their opposition because of religious principles to accepting public insurance benefits from services performed as a minister.

Because of opposition by churches to payment of the social security tax, Congress repealed the original law bringing employees of churches under the social security system and allowed churches that oppose payment of FICA taxes on their employees for “religious reasons” to exempt out of the system. Form 8274 had to be filed with the Internal Revenue Service by October 30, 1984, or, if no taxes have been yet paid on a non-ordained church employee, on one day before the due date for the first quarterly employment tax return. However, employees of churches which opt out of the social security system are still liable for social security (SECA) taxes which the employees pay through quarterly estimated tax payments or voluntary employer deductions. Churches electing exemption from FICA taxes must still withhold income taxes for non-ordained employees and transmit them to the IRS. Churches making the election must also file annual W-2 wage statements for employees.

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If a church finds that a certain tax is confiscatory, seizing property necessary for the church to carry out its mission of worship, evangelism, and caring for the poor, it should appeal to the authority of Acts 4:18-20 and refuse to pay it, or pay it under protest. In this passage Peter and John confronted the Sanhedrin's authority to prohibit their evangelization and preaching in the temple.

However, if a tax stops short of taking the property from the church or making it impossible for the church to carry out its mission, is civil disobedience justified? For example, if social security is viewed as outside legitimate duties of the civil magistrate and as supplanting the responsibilities of the individual, the family and the church, should the church refuse to pay such a tax on its employees?<sup>41</sup>

### V. Options Available

There are several options for the Church short of civil disobedience. Dr. Francis Schaeffer in *A Christian Manifesto* suggested that: first, we seek to change the law through our duly-elected representatives. Secondly, the law should be protested in the courts or through demonstrations. Finally, the citizen may flee to another jurisdiction, as our founding fathers did when they left England for America. If all these options fail or are not available, then civil disobedience or absolute refusal to pay the tax is appropriate. *A Christian Manifesto*, p.103 (Crossway Books, 1982).

In practice, the church may seek to change an offensive tax law while it pays the tax under protest. After it has paid the tax under protest, the church may file for a refund and even go to court to collect it and have the law declared unconstitutional as a violation of the First Amendment's free exercise protection. But some would question if the church should be taking its valuable resources and time to protest a tax instead of focusing on its commission to evangelize, teach, and care for the poor.

The clearest basis for the church's refusal to pay a tax or paying it under protest would arise where civil government seeks to impose an income tax on the tithe of the church. The church should object to such a tax as taxing the property of the Lord.<sup>42</sup> The same reasoning may be used to exempt church-owned land and property from property taxation. However, where a church owns land or property which is not used in carrying out its mission, then may there be a Scriptural basis for protest, since the church may be misusing the Lord's property?<sup>43</sup>

Where a tax as the social security tax (FICA) oversteps the legitimate limited role of civil government, should the church disobey the government and refuse to pay the tax? Perhaps it depends on whether this tax will (1) tax the tithe of the church —

41 See Roland S. Barnes, "Forum: Taxing Question for the Church," *PCA Messenger* (October, 1984), p. 4.

42 The Internal Revenue Service recognizes the tax-exempt status of churches as well as associations of churches and church auxiliaries and does not require any application form to be filed for tax-exempt status under Section 508 of the Internal Revenue Code.

However, in order for the income of a church to be exempt from taxation under the Internal Revenue Code, the church must meet five requirements: (1) the church's purpose must be exclusively charitable; (2) no private profit should inure to any of the church's officers or members; (3) the church should derive no substantial commercial profit from its activities; (4) it cannot divert any substantial amount of money for lobbying; and (5) it cannot divert any funds for a political campaign.

43 The Supreme Court of the United States denied tax exemption as to church-owned land which was not being used for church purposes. *Gibbons v. District of Columbia*, 116 U.S. 404 (1886). Similarly, the parking lot of a church or the yard around a parsonage has been taxed.

from which the employer's share of FICA is usually paid (*Leviticus 27:20*) or (2) impede or even make the church's mission impossible (*Acts 4:18-20*) because of the financial burden the tax imposes.

**VI. Conclusions**

Some have suggested that the distinction between legitimate and illegitimate taxation in the Scripture turns on an examination of whom it is that the government attempts to tax. For instance, the poll tax which Christ paid was levied on Him as an individual and not on the Church as an institution.<sup>44</sup> The head tax was also payable by individuals. *Exodus 30:11-16*. Thus tax on a citizen in the civil sphere would be permissible, but a tax on the church would not.

Many agree that the ultimate issue in this dispute is the attempt of the civil government to take jurisdiction over the church. Christ's command to render unto Caesar the things that are Caesar's and unto God the things that are God's coupled with His payment of the poll tax suggests that Christ as a citizen of the body politic recognized the jurisdiction of the civil government over some areas of His life and the lives of His followers (even though there is no indication that the Church as a body was under its jurisdiction. "My Kingdom is not of this world." *John 18:36*). In fact, the jurisdiction of Church and civil government may be concurrent in many areas (as it is where both the Church and civil government are interested in the protection of members against fire or health hazards). And both civil government and the Church have an "interest" in whether the income and property of the Church which is not related to or used in the mission of the Church is taxed, for both the Church and the state can utilize this property and income in carrying out their unique roles.

When the income and property of the Church are or will be used in the mission of the Church, then any attempt to tax that income or property may be considered an attempt to tax the tithe—property which belongs to the Lord. Here the jurisdiction of the Church controls within the sphere of sovereignty which Christ has delegated to it. Especially where a tax makes the mission of the church impossible (as worship, evangelism, and care of the poor), any attempt to tax such income and property should be resisted on biblical grounds and perhaps could go as far as civil disobedience or refusal to pay the tax.