

Tax Evasion And Religion

By Robert W. Wood

Religious freedom is guaranteed by the U.S. Constitution, and seems pretty fundamental. Unfortunately, being required to pay taxes is fundamental too. In a variety of contexts, taxpayers have tried to use their religion as a defense against tax evasion. You can probably predict how these cases come out.

A recent one involved the Supreme Court of Indiana. It unanimously refused to hear an appeal from Rodney Tyms-Bey. See *Tyms-Bey v. State*, 69 N.E.3d 488, Ind. App. (Jan. 13, 2017), *rehearing denied* (Feb. 23, 2017). He argued that Indiana's controversial Religious Freedom Restoration Act protected him from paying taxes. He was arrested in August 2014 and charged with three counts of felony tax evasion.

In defense, Tyms-Bey argued that he could not be found guilty. He argued that Indiana's state law effectively overrides any state law that stand in the way of a person's ability to follow his religious beliefs. Specifically, the act says, at Section 9: "A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, by a violation of this chapter may assert the violation or impending violation as a claim or defense in a judicial or administrative proceeding, regardless of whether the state or any other governmental entity is a party to the proceeding."

The act of paying taxes does not interfere with one's religious beliefs, claimed prosecutors. Besides, the defendant did not even identify his religion. He only claimed to be a sovereign citizen, which is really more of a tax protestor group.

The IRS has long gone after the sovereign citizen position as a frivolous argument, and the IRS has an impressive track record. As for Tyms-Bey, his tax evasion case is not over. But at least the religion as a defense argument seems out of the picture.

As you might expect, attempts to use religion to avoid paying federal taxes have not traditionally been successful. In *U.S. v. Lee*, 455 U.S. 252 (1982), the Supreme Court said that "not all burdens on religion are unconstitutional." The court said that, "The state may justify a limitation on religious liberty by showing that it is essential to accomplish an overriding governmental interest."

Of course, churches don't pay tax, and donations to churches are tax deductible. And what qualifies as a church can be debated. The stakes involve taxes, penalties, and even jail. A Mississippi physician was sentenced to more than six years in prison over a church that prosecutors, judge and jury agreed was a scam.

Dr. Timothy Dale Jackson of Pass Christian, Mississippi was found guilty of four counts of felony tax evasion and one of obstruction of due administration of the internal revenue laws. Prosecutors showed how the 50-year-old orthopedic physician funneled his practice income through the "Church of Compassionate Service," a church the feds targeted. It works like this.

Jackson took a "vow of poverty," claiming that as a minister, he was tax exempt. He had a successful medical practice, but had not filed tax returns or paid taxes since 2003! Compassionate Service church members "donate" to the church, renouncing all worldly possessions. They also hand over their assets to a church trust. Ministers even sign over their paychecks to the church. In return, the church provides debit cards for living expenses.

The church even made mortgage payments on the homes it received where "ministers" were housed. In reality, 90 percent of Jackson's income was returned to him. On \$1.8 million of income just between 2006 and 2009, the doc owed the IRS \$650,000. When he was sentenced, Jackson received 75 months of incarceration, and was ordered to pay taxes and interest of \$806,983, plus a \$12,500 fine.

The interaction of taxes and religion is strange. Take the so-called parsonage allowance, a tax break allowed by Section 107 of the tax code, dating to the 1920s. That was the era of my favorite fictitious minister, Elmer Gantry, a shallow, philandering hypocrite portrayed by Burt Lancaster in the movie.

The parsonage allowance says an ordained member of the clergy can live tax-free in a home owned by his or her religious organization. Alternatively, the clergy member can receive a tax-free annual payment to buy or rent a home. The parsonage allowance makes being in the clergy sound pretty good.

Yet religion doesn't protect you from criminal tax charges. Consider Phil Driscoll, an ordained minister and Grammy Award winning trumpet player. He went to prison for tax evasion. Later, because of the parsonage allowance, the Tax Court ruled he didn't owe federal income taxes on \$408,638 provided to him by his ministry.

The IRS appealed and the 11th U.S. Circuit Court of Appeals reversed. Driscoll asked the Supreme Court to review it, but the Supreme Court refused to hear it. The Church of Compassionate Service that got Jackson into such trouble is discussed in *U.S. v. Hartshorn*, 751 F.3d 1194 (10th Cir. 2014). There, the IRS got an injunction to silence Head Minister Kevin Hartshorn.

Hartshorn had 50 ministers under his wing, telling them not to pay the IRS. When the IRS had enough it went to court to enjoin the head minister from preaching his no-tax mantra. Hartshorn lost, appealed, and lost again when the appeals court ruled for the IRS. Thus, Hartshorn failed to shake the injunction. Hartshorn's claims about free speech didn't help him either.

Even if the church was legit, the court said, Hartshorn's plan wasn't. What's more, Hartshorn knew his "you-don't-have-to-pay-taxes" mantra was false. Even if he didn't, he should have known. To the IRS, this kind of speech is a little like yelling fire in a crowded theater.

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