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Management Corporation Entitled to Regulatory Exemption as Religious Organization

by Mark E. Chopko and Christopher E. Cummings

The contemporary structures used by religious institutions to administer and conduct their ecclesiastical activities and charitable services are varied and often complex. Religious institutions form civil entities and enter into sophisticated agreements, just as their for-profit counterparts do, as a way to manage risk, protect assets, ensure continuity of operations and create efficiencies – all of which result in more resources being available for the mission. But these institutions may not always look “religious” to regulators and taxing authorities who may think a religious organization is “just a church,” and not much more. Modern religious organizations simply do not resemble the “old-time religion” depicted in so many classic movies and novels. More often than one would like to think, however, government agencies question whether these operations, evolved from the simple school or hospital run exclusively by sisters, for example, are truly works of religion adapted for modern times. If it doesn’t have a steeple, how can it be religious?

When an order of sisters sold a property to another religious order of sisters, it was a continuation of activities between them for their mutual support and benefit. Pursuant to state law, realty transfer taxes shall not be imposed on “any transfer between religious organizations.” It would seem obvious that the transfer between orders of sisters plainly is one between religious organizations. Here, the grantee was the property management company created by the sisters to generate precisely the kind of operational efficiencies noted above. Exactly what constitutes a “religious organization” is not spelled out in the statute, but the regulations provide that to qualify for the exclusion from transfer tax, the grantor and grantee “must be either a religious or an apostolic association or corporation or a nonprofit corporation, fund or foundation founded, endowed and maintained by, and devoted to the interest of, a religious sect”

Nearly a year following the recordation of the deed, the Pennsylvania Department of Revenue (PADOR) formally issued a determination that the transfer was taxable, with the full implication being that the management company *could not* be a religious organization. Such a determination reflects the view that only those organizations performing traditional religious activities, such as the operation of a church or place of worship, fall within the meaning of a religious organization.

Despite submissions of religious creation and control, the integration into the operation of the sisters, and inclusion in the denominational group ruling, the first level of administrative review found that the sisters did not prove that their management company was “founded, endowed and maintained by, and devoted to the interests of a religious sect.”

On administrative appeal to the Board of Finance and Revenue (the Board), the sisters objected to what seemed to be the use of an old caricature of what a religious institution “should be,” rather than what the evidence showed. Moreover, the sisters noted that failing to account for the reality of how religious institutions structure themselves and operate violated their rights under the First Amendment by substituting the bias of the state about what can be a church. The Board reversed PADOR’s determination and properly concluded that the transfer to the management company of the sisters was indeed a transfer to a religious organization under the law, and recognized its subsidiary and supporting relationship to the sisters. With the finding that the subsidiary was in fact a religious organization, the transfer was excluded from the imposition of transfer taxes.

It is too early to relegate the old caricatures of religious institutions to the dustbin of history. However, there are many examples of regulators that do not appreciate how religious institutions have grown and evolved. As the Supreme Court recently held, the role of the state in deciding what is or isn’t a religious corporation is circumscribed by



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the First Amendment. But religious organizations will want to ensure that their organizational documents properly reflect the organization’s integration with their religious community and be prepared to explain patiently the new face of religion in a community. ■

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