Issue the Thirty-fourth of Matters concerning His Lawful assembly

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Unincorporated Associations and Religious Societies

by Randy Lee

The purpose of the following article is to demonstrate to "the church" that in the "eyes" of Caesar, and according to The Word of God, being unincorporated/unregistered is not sufficient to avoid the Roman Imperial State's taxing authority, though it is a beginning.

In addition, its purpose is not meant to be a criticism of the many well meaning Christian men and women who have labored for The Lord in these matters, but simply a supplemental guide for the avoidance of 'rendering unto Caesar' that which is not and should not be his.

Being the same ungodly entities, 'The FEDS,' 'The Roman Imperial State,' 'The United States,' and 'Caesar' will hereafter be referred to as 'the State.'

Believing themselves to be free from the State's taxing authority after unincorporating, many of these local churches and their pastors have been, in recent years, pulled into Federal District Court for failing to pay their "fair share." At first glance, this would seem to be a breach on the part of the State. Therefore, we must go to the source, cause and origin of the State's presumed right of action to determine whether or not there is *truly* a breach, i.e., is the particular church "subject to the jurisdiction thereof" --for this phrase will ultimately determine whether or not there is a tax to be had on the part of the State.

The State, when pulling these unincorporated churches into court, usually designate them to be an "unincorporated association," not "a church." An *unincorporated association* is defined by the State to be:

"*a body or collection of persons who have united or joined together, without a charter, but upon the methods and forms used by corporations, for the prosecution of some business or common enterprise, and who are called, for convenience, by a common name."* Morrissey v. Commissioner of Internal Revenue, 56 S. Ct. 289, 296 U.S. 344.

The important word above is "enterprise." *Enterprise* is defined in man's law to be:

"A business venture or undertaking." Black's Law Dictionary (6th Ed.), page 531.

In conjunction with the above, we must look at the mode of operation conducted by the unincorporated 'church' to determine whether or not it is seen, in the "eyes" of the State, to be *in fact* "the church," or simply another one of its taxable entities *subject to its jurisdiction*, more commonly known as an *unincorporated association/ religious society* "doing business" or "engaged in an enterprise":

More importantly, we need to look at The Word of God to see what He has mandated concerning these matters, thereby showing the State to be, when preceding lawfully, nothing more than Our Father's rod of correction for His remnant when they fall into error.

"By their fruits you will know them" is the best rule by which you can determine whether or not we're looking at *the church* or one of the State's *taxable entities*.

In short, is the subject church partaking of and feeding on the State's dunghill?:

*"It has been said that equity will look through the form to ascertain the real intent of an association of individuals, and will give effect to the real purposes of the organization in order to promote fair dealing and effectuate justice."*White v. Pacific Southwest Trust & Savings Bank, D.C.Cal., 9 F.2d 650.

We must always remember that, "When you play in Caesar's sandbox with Caesar's toys, you will ultimately play by Caesar's rules" (see *Matthew 6:24*). For as the apostle Paul said in so many words, "that which is not of the things of God through Christ Jesus, is but dung" (see Philippians, Chapter 3).

The main question we must examine (just as the State does) is: Does the subject church partake of and function according to *Biblical procedure* or according to the State's *lex mercatoria*?

Since we are looking at two diametrically opposed systems, the lines are easily drawn. On the State's side we have personal profit and private gain (*modern* commerce). On the Biblical side we have "there is no profit under the sun, for all is vanity and chasing after the wind" (see *Ecclesiastes 2:7-17*).

A clue to what determines "income" and subjection to the Commerce Clause can be seen in the following case:

"An income tax law may apply retroactively to "recent transactions" which includes the "receipt" of income during the year...." Welch v. Henry, 305 U.S. 134.

"Recent transactions" and "receipts" are the indicators and evidence of "income" and profit seeking. But unless there is a record of such, there is no evidence, and therefore nothing to base a tax upon. When keeping a record of such 'transactions," one automatically becomes an agent of the State:

"A tax statute may validly require one making payments to another to act as agent of the state and collect the income tax from the one to whom payment is made." IHC v. Wisconsin Dept. of Taxation, 322 U.S. 435.

Bank accounts, check writing, bank money orders, debt based credit, receipts, employees, salaried pastors, etc., are the record and evidence that *the association* is engaged in an *enterprise* for profit-sake.

"*Where the association is organized for commercial purposes, and operated for pecuniary (monetary) profit, it is no more than a partnership, and the rights and liabilities incident to that relation attach to its members, as well between the members themselves*." Chastain v. Baxter, 31 P.2d 21.

So we see that "the church," when evidencing through the "record" that it is just another *religious merchant* pursuing the "almighty dollar,' in the "eyes" of the State it is nothing more than a "partnership" governed by and subject to the rules of the Law Merchant:

"*THE LAW MERCHANT. Although much of the present law of sales, partnerships, insurance and bankruptcy is derived from the customs and usages of the law merchant (lex mercatoria), the law of negotiable instruments was, undoubtedly, the most remarkable development of the law merchant. The Uniform Negotiable Instruments Law to this day provides that "In any case not provided for in this act the rules of the law merchant shall govern."* (Section 196, N.I.L.)

"The law merchant, or mercantile law, was the comprehensive body of privately administered rules and customs enforced as law by merchants throughout the medieval commercial world, and, especially, in the Italian city-states. Each market, fair and seaport had local merchant courts where a jury of merchants would settle controversies with efficient dispatch upon the basis of mercantile custom. From Italy, the law merchant spread to England, where it gradually underwent a centralization." Teevan and Smith, Business Law (1949), vol. II, p. 329-330.

The Federal District Court, when hearing an IRS case is nothing more that the *modern* centralized "merchant court."

On the State's taxability of foreign associations engaged in an *enterprise*, the following commentaries and cases may shed additional light on the question of partnerships and associations:

*"Whether a given association is called a corporation, partnership, or trust [*or church] is not the essential factor in determining the powers of a state concerning it. The real nature of the organization must be considered. The Michigan statute under consideration in this case (Comp. Laws 1915, 9071 read: 'The term 'corporation' as used in this act shall be construed to include all associations, partnership associations, and joint-stock companies having any of the powers or privileges of corporations (* foreign tax immunity) not possessed by individuals or partnerships, under whatever term or designation they may be defined or known in the state where organized.'*

There were two questions before the court: First, whether the Massachusetts legislature, in passing the statute taxing companies 'incorporated or associated under the laws of any government or state other than one of the United States,' had intended to levy the tax upon this type of English joint-stock company; and, secondly, whether Massachusetts could do this, if it had intended to do so. The Massachusetts Supreme Court decided that its legislature could tax such a company, and that it had intended to do so as a company 'associated' rather than 'incorporated.' As some members of the company were British subjects, a tax on them might violate the commercial treaty of 1815 with England, [Oliver v. Liverpool & London Life & Fire Ins. Co., 100 Mass. 531. This view was supported by Mr. Justice Bradley, of the Supreme Court, in his dissenting opinion.] and, as other members were citizens of New York, a tax on them might violate section 2, Article 4, of the Constitution. On the other hand, a tax on it would not offend the provisions of either of these instruments. Consequently, it must be conceded that the

Supreme Court was deciding that the Liverpool Company was a corporation under Massachusetts law, even though Parliament did not intend to incorporate it." Stevens, Corporations (1949), pp. 30-31. .

*"An association in fact doing business as a legal entity (*having a common name) may be estopped to deny its own existence."* Askew v. Joachim Memorial Home, 234 N.W.2d 226, 236.

When the body of the true church (the corpore') engages in profit seeking as evidenced through the use of the instruments and ways of the law merchant, it is nothing more than one of the State's taxable and floggable entities:

"Properly used, 'ultra vires' means beyond the scope of the corporate purposes and activities as agreed upon by the shareholders. As so defined and used, the ultra vires doctrine involves an application of the principles of the law of agency. Corporate acts which are illegal, prohibited by law, or against public policy are objectionable for those reasons, and because they are ultra vires, and they call for the application of the same principles that would be applied to the acts of individuals or unincorporated associations when those acts are illegal, prohibited, or contrary to public policy." Stevens, Corporations, pp. 292, 293.