

TAXES

Did Mormons Benefit From The IRS Scientology Deal ?

Peter J Reilly Contributor 

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The Tom Cruise - Katie Holmes story inspired me to take a look at the tax history of Scientology. Scientology and the IRS engaged in what I called a Thirty Years War, which was ended by a secret closing agreement in 1993. The agreement was leaked in 1997 and, as I found from the reaction to my post, is still controversial.

Probably the most controversial part of the agreement was that Scientologists were allowed to deduct the fairly substantial "fixed donations" they are required to make to experience auditing sessions.

The reason that allowing the deduction of "fixed donations" for auditing seemed so odd, was that the IRS had extensively litigated the issue and ultimately won it in a Supreme Court decision. Why would the Service crumble on that only a few years after winning it in the Supreme Court ? The answer appears to be in the decision itself. Scientology's argument was that it just wanted to be treated like other religions that provided religious benefits in exchange for "donations" and the IRS was being inconsistent. The Supreme Court did not exactly reject that argument in the **Hernandez** case:

Perhaps because the theory of administrative inconsistency emerged only on appeal, petitioners did not endeavor at trial to adduce from the IRS or other sources any specific evidence about other religious faiths' transactions. The IRS' revenue rulings, which merely state the agency's conclusions as to deductibility and which have apparently never been reviewed by the Tax Court or any other judicial body, also provide no specific facts about the nature of these other faiths' transactions.

The IRS' application of the "contribution or gift" standard may be right or wrong with respect to these other faiths, or it may be right with respect to some religious practices and wrong with respect to others. It may also be that some of these payments are appropriately classified as partially deductible "dual payments."

Essentially, the Supreme Court said that Scientology had not made its case on administrative consistency, not that it did not have one. Justices O'Connor and Scalia in their dissent went into some detail

on the other religious practices where fixed donations could be viewed as a quid-pro-quo.

The next step for Scientology's attorneys was to pack a nice ecumenical can of worms for the IRS to be challenged to open if it wanted to continue to disallow auditing under the **Hernandez quid-pro-quo** theory. The story is related in a [2004 article](#) by [Allan J Samansky](#) in the Virginia [Law Review](#):

*Almost immediately after the Supreme Court decision in Hernandez, Scientologists initiated two cases that contested the nondeductibility of payments for auditing and training. In **Powell v. Commissioner**, Scientologists argued that they were being unfairly treated because the IRS routinely allows adherents of other religions to deduct payments made in return for intangible religious benefits. The taxpayers had tried to raise this issue before the Supreme Court in Hernandez, but the majority held that the record was insufficient for it to be considered, the Eleventh Circuit held that, if the taxpayers' allegations were true, they had stated a claim upon which relief could be granted, and remanded the case to the district court for further proceedings. In another case, **Garrison v. Commissioner**, Scientologists had presented evidence to the Tax Court, attempting to show that the IRS routinely allowed adherents of other religions to deduct payments that were indistinguishable from contributions that the Scientologists were not allowed to deduct.*

The IRS declined to open the can of worms and entered into the settlement agreement, so we do not know how the Courts would have ruled. The interesting question to me is if other religions would be severely stressed if the Hernandez standard was applied to them. As I indicated above the Scientologists were quite ecumenical in their search for comparable practices citing

Protestants, Catholics, Jews and Mormons. Of the four, it appears to me that Mormons would be the ones with the most to worry about. My research has been less than exhaustive, so I'm hoping that commenters might be able to add something but here we go:

Protestants

The Protestant practice that Scientologists argued created a Hernandez quid-pro-quo was "pew rents". Services might be open to everybody, but some seats were reserved based on regular payments. There was a 1970s ruling that "blessed" this practice, but as far as I can tell it was already on the quaint side by then. I have not been able to find references to pew rents other than as an historical curiosity. Granted I haven't looked very hard so maybe some commenter will point me to a denomination that would feverishly sweat if there ever was a threat of pew rents becoming non-deductible, but Unitarian Universalists and Southern Baptists are not worried to name a couple.

Catholics

Catholics are pretty strong on the idea that charging for sacraments is a really bad thing. I think the Council of Trent beefed up the rules on that after that annoying Luther guy started complaining about indulgences - which among other things led to the real Thirty Years War, but let's not go too far afield. Catholics do allow something called a mass stipend to direct the intention of a Mass. If you want some of the actual grace generated by a particular Mass to go to benefit your grandmother, it will **generally cost you about ten bucks**. That Mass can have other intentions mentioned, which because of the way the system works will not lessen the amount of actual grace going toward your grandmother, but a particular Mass cannot have more than one person paying for an intention. The ten bucks is deductible, but I don't think it is that big a deal. I doubt

there are many Catholics who donate hundreds, much less thousands toward mass intentions so the system does probably not rely much on deductibility. Also there is a significant limit to this practice as a money raiser. The general rule is that a priest is not supposed to say more than one Mass a day, although there are exceptions. My back of the envelope computation is using a 10 dollar minimum contribution (presumably if you give more than the minimum it would be deductible regardless) you might be generating \$5,000 per priest. There are about 40,000 Catholic priests in the United States for over 60 million Catholics. Something tells me the bishops are not up late at night worried about the deductibility of Mass stipends.

The topic does get me thinking about a potential Super PAC strategy. Using really round numbers you could probably buy all the Mass intentions in a swing state between now and election day for roughly a million bucks. I don't know if Romney's team was thinking about this when they named Paul Ryan, a Catholic, as running mate. You can't rule out that they were going after the critical "Let's freak out the founders" demographic. It would seem that the prospect of a two term black President was irresistible to them, but now it has to compete with following a one term black President with a line-up of President, Vice President and all nine Supreme Court justices not including a single Protestant.

Jews

There is an issue here. Synagogues seem to rely heavily on dues and there are times when seats at high holy days are reserved for dues paying members. This article in the [Jewish Daily Forward](#) indicates that synagogue dues tend to raise about as much as plate collections and pledges do in Christian churches. It also indicates that the dues system is pretty firmly entrenched.

According to the article dues for a family generally vary between \$1,000 and \$3,000 per year. Making some or all of that non-deductible would probably not be a deal breaker for people, but I find the notion troubling. There is a lot out there on the cost of high holy day seats and it may well be that it was a major concern when the "intangible religious benefit" exception was carved out of the goods and services acknowledgement requirement. The issue also seems to produce [a good amount of humor](#)



Mormons

The call to tithe is talked about by Christians and Jews, but Mormons seem to be the only major group that enforces it - vigorously. In order to set foot in the temple, you need a "[temple recommend](#)", which needs to be renewed every year. Being a full tithe payer is one of the several requirements for a temple recommend. Members are supposed to attend a "tithing settlement" meeting with their bishop. If you would like to get a sense of what is involved here is a [twenty minute training course](#) about the responsibilities of the different people involved. If

they are following the training, those guys are really well organized. It does not appear that reviewing your personal financial records is part of the "tithing settlement", so ultimately it is up to your own conscience as to whether you have paid a "full tithe". If Romney did a Son of Boss deal, in 1999 for example, there is no guidance on whether he could have considered that in determining whether he had a paid a "full tithe". Also did he have to do some sort of circular computation when he was paying his tithe with appreciated property ?

Not surprisingly, not everybody likes this system. Here is a comment from [a critical site](#):

I think tithing settlement is a complete invasion. I bristled every time I had to do it. It just reinforces the fact that you have to pay your way into the temple and into the "celestial kingdom". Back when I was a member, my bishop once withheld my recommend because I was a month behind on paying my tithing. I was working my ass off in ward and stake callings, taking my kids to church every week by myself, doing my visiting teaching, etc., but he felt I wasn't worthy to go to the temple, that I was "stealing from the lord." I missed my cousin's wedding because I didn't have the recommend. I was devastated and completely embarrassed to miss the wedding. I was so ashamed because of the things the bishop said to me.

I think that the two arguments that Mormons might be able to make on the Hernandez quid-pro-quo being applicable to their tithes is that the computation is left to their own conscience and paying a full tithe is just one of the requirements for a recommend. Paying a full tithe is more one of the signs of worthiness rather than a quid-pro-quo. Still I think there is serious quid-pro-quo question there and the stakes are pretty high. If you are required to pay 10%

of your income having it be deductible would lessen the pain considerably.

Conclusion

When the requirement that charitable acknowledgments include specific language about goods and services, there was not a requirement that "intangible religious benefits" be valued. This did not, however, overturn Hernandez. If someone could get standing to challenge Scientology auditing charges or any of the other practices highlighted above, the Ninth Circuit would probably go at it with relish. Something tells me it is not going to happen though. The can of worms will probably remain sealed.

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Peter J Reilly

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