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*Introduction*

**My personal perspective comes from being both an attorney at law and holistic minister practitioner for over twenty years. I am a graduate of Rutgers College (B.A. with Distinction, 1967), Rutgers Law School (J.D., 1973) and am a founding Trustee of a 501(c)(3) Exempt Church established in 1974.**

During that time, I have worked with, and represented many alternative practitioners. In 1979 the National Health Federation awarded me a Citation for my work with those seeking alternative modalities. I have presented my views to many concerned audiences and an earlier version of this presentation was broad cast in 1984 nationally on C-Span. In 1995, working with the Life Extension Foundation, I defended the New Jersey DHEA Cases, protecting the dietary substance status of DHEA.

I have also been trained in several alternative modalities, including Spiritual Energy Work™, Homeopathy, Bioenergetic Nutrition™ and Signature Sound Work™ with institutes such as the Five Elements Center in Mt. Lakes, NJ, the Hololinguistic Institute in Toronto and the Signature Sound institute in Athens, Ohio. In New Jersey, my home state, Spiritual Ministration is a recognized Healing Art, under NJSA 45:9-21, which explicitly permits, "the ministration to, or treatment of, the sick or suffering by prayer or spiritual means, whether gratuitously or for compensation, and without the use of any drug material remedy..." Many other states also permit Spiritual Healing. Ministerial healing and counseling have a long and honorable history.

Thus, I come to the spiritual, legal and ethical issues facing alternative minister practitioners with both an attorney's understanding, and the concerns of Church members and minister practitioners.

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*Compliance with the Law Permits Asset Protection for Charitable Purposes*

My purpose here is to discuss some of the questions which have come to me over the years, from those members and minister practitioners; from people who are responsible for the administration of Church business (related and unrelated), dealing with Taxation of Churches and individuals who are trustees, ministers or otherwise involved in Church activities. For example, some of the common questions which I will address will be:

Is a Church exempt from Federal and State Income Taxes?

Is a Church exempt from Capital Gains Taxes when it sells real estate or stock?

Is the Church exempt from Taxes on its Passive Income?

My goal is to help religiously oriented members and minister practitioners understand how they can structure their churches to fully comply with the special legal requirements of exempt church related activities and have an overview understanding of asset management for charitable purposes. When assets are entrusted to a Minister, the Minister has an obligation to manage them for charitable purposes in the best way he or she can. The end we seek is to be better enabled to do the spiritual work to which we are called by the Higher Power in which we each believe. To do this, we need first to discuss the History and Practice of religion in America, and then to review some of the special provisions of the Law, including examples taken directly from the Government's own publications relating to Church activities.

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### *A Bit of History*

The history of Religion in America dates back to the very first settlers of the "New World". The earliest Amerindians brought their shamanistic spiritual beliefs with them. As the millennia passed, religious ideas became more sophisticated among certain tribes. The Mound Builders of the rivers and plains left a legacy of religious construction comparable to the Megalithic remains of the Old Civilization of Europe. Whole hills were sculpted into religious symbols, such as the famous Snake Hill in Illinois (which shows the coiling Cosmic Snake devouring the Lunar Egg). On the East Coast, Tripod Rock (at Pyramid Mountain Park in Morris County, NJ) and its associated Solstice Sunset Stones remains a locus of Spiritual Energy and pilgrimage.

The prosperous Amerindians of the Northwest developed the Totem System with its animistic symbols, and the Pueblo cities of the Southwest established the rich evolutionary cosmology of the Katchina mythos. The Six Nations of the Finger Lakes area developed the tribal democratic institutions that allowed their peoples to live in religious and political harmony, with the Keepers of the Sacred Fires (one for the Chiefs, one for the Shamans) active to this day. For the tribes, religion, politics and culture were one.

When Europeans began to occupy North America, they brought their religious views with them. Roman Catholic Padres accompanied the Conquistadors in the early 1500's and established the famous series of Missions along the coasts of both Californias. By 1539, the first inland Mission (Santa Fe) was founded. Somewhat later, English settlers brought Protestant Christianity with them. The Church of England became the legally "established" church of Virginia, supported by tax moneys, in 1619. In 1620 the Puritans (who fled England because of their opposition to its official church) landed at Plymouth Rock, seeking religious freedom, for themselves at least. The Puritans were intending to settle in Virginia, but when they found themselves in New England instead, they immediately established their own church as the sole lawful church. They attempted to create a full scale Theocracy based upon the Rule of the Elect, or government by church members in good standing only.

Despite these inauspicious beginnings, America became a true haven for religious freedom. Rhode Island was founded by Roger Williams and other Protestant dissenters who permitted broad religious freedom. Pennsylvania was founded as a refuge for Quakers and other religious minorities, as was West Jersey.

It is, in fact, to the Quakers, or Society of Friends, that this Nation owes much of its religious freedom. The Friends sought a simple life, rejecting aristocratic pretensions and holding that each person possessed the Inner Light. They practiced decision by consensus and felt morally compelled to "Speak Truth to Power." As a result, they were brutally persecuted in both England and New England. By 1647, not only had the Quakers been cruelly "whipped"

from the Massachusetts Bay Colony, but even the relative haven of Rhode Island experienced its first persecutions of religious dissenters when a group of proto-Baptist followers of Ann Hutchinson were fined as "common opposers of all authority" due to their rejection of civil taxation on religious grounds. While they would tithe to their church, they would not tithe to the government for the common defense.

With the ending in 1639 of the Salem Witch Trials, during which a number of unfortunates were hung for their alleged Satanic practices, overt, deadly religious persecutions abated. The power of the Theocracy in New England eroded, and people of conscience began to hold the view that all religions had to be equal and free from political interference. The European "Enlightenment" of the 17th and 18th Centuries spread to America as gentlemen-philosophers such as Thomas Jefferson became spokespeople for the political concept of Religious Freedom. With the growth of competing religious organizations which accompanied the Great Religious Awakening of the 1750's, no single church could any longer make a political claim to absolute truth.

In 1774 Jefferson was responsible for the disestablishment of the Church in Virginia. This became the pattern for the rest of the Revolutionary Period, and culminated in the adoption of the First Amendment to the Constitution in 1797, claiming to guarantee Religious Liberty. Thus, clearly, one of the fundamental ideas of the American Revolution was the separation of church and state, to protect churches from political interference.

**"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."** Article 18 - [Universal Declaration of Human Rights](#)

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### *First Amendment Religious Freedom*

The First Amendment is concerned with three areas of Freedom necessary for Religion. First, it guarantees the Freedoms of Association and Assembly, rights which are essential for the creation and continuance of religious bodies. Second, it forbids the "establishment" of any Church as the official government (hence tax-supported) religion. Third, it forbids any "abridgment" of Religious Liberty -- of the right to believe as you will.

The First Amendment is the capstone of the US Constitution, and represents one of the greatest victories for human liberty in human history. The Supreme Court has indicated that the rights protected by this Amendment have a "preferred position" in our Law. The rights so guaranteed are superior to the needs of government or even the wishes of the majority of the people. Under the protection of the Constitution, independent churches have flourished in America as nowhere else in the World.

While there have been incidents of religious bigotry (the abuse which Roman Catholics suffered in the mid-1800's, or to which Jews were subjected until the past generation, or to which alternative churches can still be subjected) and dark instances of political repression (the cruel conquest of the Mormon Republic of Utah or the vile harassment of the benign "Pennsylvania Dutch" by the taxation, conscription and school authorities), the American record for religious tolerance is second to none. As a result, religion has been a mainstay of American civilization, and the charity and good works sponsored by American Churches have touched the lives of hundreds of millions throughout the world.

Currently, American Law makes a distinction between Religious Belief and Religious Action. Thus, in the leading cases from the 19th Century, the Mormons were allowed to believe in polygamy, but were prevented from practicing it. More recently, the Native American Church was permitted to believe in the Sacrament of Peyote, but, some states have been allowed to ban the actual use of the Sacrament. In both examples, the laws have not been fully obeyed.

While we can see that there may have to be a distinction between, say, believing in human sacrifice, and actually killing people, the same reasoning should not apply to millennia old practices, such as the use of Sacramental Herbs

(and other natural nutrients) for healing and spiritual purposes. American religious communities have practiced many socially unusual activities, such as communal living, and there should be room, on this Continent, for many alternative lifestyles, informed by sincere religious belief. This is especially appropriate during the current period. The Nation is experiencing a rebirth of Religious Fundamentalism among Christians. At the same time there are an increasing number of non-Christian immigrants (including many Moslems and Buddhists), and a significant increase in interest in the Old Earth Religions, the Reawakening of the Goddess.

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### *Religious Exemptions*

In furtherance of the Constitutional mandate, Congress and the several States have enacted various exemptions from state authority for churches and ministers. The historical exemption from conscription and various statutory tax exemptions are among these.

The exemption from military (as opposed to alternative) service for Conscientious Objectors was originally an almost purely religious exemption, and required, initially, membership in a church, like Jehovah's Witnesses, which preached pacifism. Cases arising from the War in Southeast Asia changed all that, and if there were a draft now, anyone professing "sincere beliefs" which hold the same position in his or her life as organized religion might hold in someone else's life, could qualify as a Conscientious Objector if they oppose service in the military for religious or moral reasons.

Many States provide comprehensive exemptions to Churches with regard to sales and real estate taxes. The realty tax exemptions often are limited to sanctuaries and limited parsonage properties. Often state taxing authorities will require proof of Federal tax exemptions before extending state level exemptions.

*"...neither this court nor any branch of this government will consider the merits or fallacies of a religion. Nor will the court compare the beliefs, dogmas, and practices of a newly organized religion with those of an older, more established religion. Nor will the court praise or condemn a religion, however excellent or fanatical or preposterous it may seem. Were the court to do so, it would impinge upon the guarantee of the First Amendment." Judge Brattin, Eastern District of California, in Universal Life Church, Inc. vs. United States, 372 F. Supp. 770, 776 (E.D. Cal 1974)*

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### *Special Tax Status*

Pursuant to the injunction of the First Amendment forbidding the making of laws which abridge or establish religion, federal law has little to say directly about churches. There are several important sections of the IRS Code dealing with ministers and members of orders, but there are only a few which deal directly with church organization.

These sections are, first, Section 501(c)(3), which deals with any organization that engages in religious, charitable, educational, literary and scientific research activities. Any organization exclusively organized and operated for these purposes can be tax exempt. The second clause is Section 508, which tells us that the above mentioned organizations must first apply to the Commissioner for recognition of their status (which relates back 15 months when granted). There is an exception (the statute says "mandatory" exception), and it applies to "churches, their integrated auxiliaries", and associations of churches. This means that such bodies are automatically exempt without seeking government recognition. The third is Section 170, which says that contributions to church and associations of churches are deductible (up to 50% of an individual's gross income or 5% of a corporation's taxable income). The fourth and last clause is Section 509, which deals with private foundations as distinguished from churches. We can conclude then, that a church is automatically exempt, without need to apply to the Commissioner, if it is operated for religious, charitable, scientific research, educational and literary purposes, and its organizational documents include the language required under the statute, that (1) the church carry-on no activities which are not permitted to be

carried on by exempt bodies, or by bodies to which donations are deductible, (2) no substantial part of the activities be carrying on of political activities, (3) in the event of dissolution, the remaining assets be distributed to other exempt bodies, and (4) that no part of the income inure to private benefit, except for reasonable compensation for services to or for the church.

Words such as "church" and "integrated auxiliary" have not been clearly defined. Section 7(i) of Regulation 1.501-1(b) however, gives us:

"Churches, interchurch organizations of local units of a church, conventions, or associations of churches, or integrated auxiliaries of a church, such as a men's or women's organization, religious school, mission society or youth group..."

It thus appears that an "integrated auxiliary" is a religious entity which carries on the activities of a church. These entities are not independent local churches, but are semi-autonomous bodies within a church. Any church may establish such bodies which may carry on the various exempt activities of the church, including alternative holistic modalities.

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#### *Exempt Business Activities*

Churches may carry on ordinarily non-exempt "business" activities. If these "business" activities are church related (such as publication of religious books and periodicals) they are also exempt from federal income taxes. Additionally, certain types of "passive" income of churches are also exempt (this category includes dividends, interest, royalties and capital gains -- thus permitting Churches to accumulate a Patrimony through donation and passive investment). Even income from Church owned real estate can be tax-exempt, to the extent that the property is not debt financed. The Law favors passive income for exempt organizations, as the above list of exempt sources indicates. Thus, the primary strategy for asset management for charitable purposes is to seek passive income sources for the religious organization, while also being aware that related or business activities, though not passive like dividends, interest royalties and capital gains, are also exempt. The Government tells us that such related business activities must contribute substantially to the exempt purposes of the exempt organization. Activities primarily for member's benefits, or carried on by volunteers are also usually exempt.

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#### *Religious Workers' Special Exemptions*

Individual Ministers and members of religious orders have special tax law provisions which apply to them. Insofar as religious workers receive secular income, it will be reportable and taxable as any other person's income. Church related income, however, is treated differently.

First, such income is exempt from withholding under Section 3401(A)(9), so that any tax is paid quarterly instead of being "withheld at the source".

Second, the income is exempt from the Social Security Tax, Section 3306(c)(8), if the proper form is filed (No. 4361 for Ministers, 4029 for members of religious orders). Many churches provide retirement funds or annuities for their ministers and members of religious orders.

Third, a Minister's Parsonage Allowance, under Section 107, is "excluded from gross income" and is not taxed or reportable as income (this includes rental or mortgage and realty tax costs, repairs, utilities and other expenses necessary to provide a parsonage). The Law permits the payment of these expenses directly by the Church, while the Minister can also deduct real estate taxes and mortgage interest from his or her personal tax return: a double deduction!

Lastly, all of a Minister's Professional Expenses (office, educational, ministerial travel, entertainment, etc.) may be paid as an ordinary business expense of the Church.

Whether a Minister's activities are in furtherance of his or her ministry depends on the details of the Minister's ordination. Ordinarily, the conducting of sacerdotal functions and church administrative affairs are always considered in furtherance of the exempt purposes. Educational work is not automatically included, and should thus be specifically set forth in the ordination, as should the carrying on of a healing ministry. Sacerdotal functions include religious rituals, marriages and the like. The management of assets for charitable purposes would come under the heading of church administration.

Members of certain churches may also be exempt from the Social Security system on conscientious grounds. The law (26 USC 1402) allows exemptions where the church (1) is conscientiously opposed to Social Security, (2) provides an alternative approved by the Secretary, and (3) has been in continuous existence since 1950. This last provision seems to be contradictory to the equality which all churches are assured by the Constitution. This provision, discriminating against certain churches based on the date of their founding, is one of the remaining blots on the US government record in the area of Religious Liberty. The recent denial of exemption to the Mennonites teaches us that even well established churches can be victimized by tax law "discretion".

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### *Church Clinics*

Special provisions also apply to exempt hospitals, including Church clinics, and determine where their activities are exempt "related business" income, and where they are not. A trade or business which is regularly carried on, but which contributes importantly to the exempt purposes of the organization, will be exempt. Some recent examples from IRS Publication 598 can clarify these matters. For example, where an exempt hospital leases its adjacent office building to a hospital based medical group for a fee, and the medical group provides all diagnostic and therapeutic procedures to the hospital's patients, and operates its ER on a 24 hour basis, the leasing activity is not an unrelated business. In another example involving an exempt hospital, the gift shop, cafeteria and parking lot income were held to be exempt. A halfway house has a furniture shop to provide full-time employment for its residents; the profits from the furniture shop, which are applied to the operating costs of the halfway house, are exempt.

Among the best resources for Ministers is available from Worth Tax & Finance Service 219-267-4687 and is their [Tax Guide for Ministers and Religious Workers](#), \$14.95 plus \$4.75 shipping. It deals with many issues concerning the ministry, including the extent of professional expense reimbursement and the requirements to show the reasonableness of parsonage allowances.

It is important for minister practitioners, especially those with supervisory authority in their Churches, to have a reasonable understanding of the limits on exempt activities. This permits, with professional assistance where warranted, the best asset management for charitable purposes. And proper management allows the minister to better serve the spiritual mission he or she has chosen.

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### *Recent Developments*

The Congress of the United States adopted the RFRA, the *Religious Freedom Restoration Act of 1993* (P.L. 103-141). In this enactment Congress determined that "governments should not substantially burden religious exercise without compelling justification..." and that "laws 'neutral' toward religion may burden religious exercise..." Therefore Congress determined to protect the free exercise of religion as follows:

"Sect. 3. Free Exercise of Religion Protected. (a) In General. -- Government shall not substantially burden a person's exercise of religion, even if the burden results from a rule of general applicability, except as provided in subsection

(b). (b) Exception. -- Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person -- (1) is in the furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest. (c) Judicial Relief. -- A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government..."

This enactment is a departure from the tradition of non-involvement in religious matters and recognizes that religion should be protected, in this era of Big Government, from even "neutral" laws which burden religious exercise. Congress has thereby issued a significant statement of Public Policy and has put the Courts at the disposal of those who suffer burdens upon the free exercise of religion at the hands of government. This Act will have a major impact, further securing religious liberty, over the coming decades. In the earliest legal tests of the Act animal sacrifice was permitted under certain circumstances. This Law is being challenged in the Courts and may not survive; however, it does show that Congress is aware of the issue and is seeking to protect Religious Freedom. [This Statute has been held "unconstitutional" by the US Supreme Court, as applied to States and localities, as a violation of the "separation of powers" by Congress -- which implies that the Courts will determine the limits of religious rights protection and will apply standard civil rights analysis, permitting interference where a "significant" government "interest" is involved.]

Recently, May 28, 2002, the 9th Circuit Appeals Court discussed the current state of the law, while discussing the RFRA, "If the law does create a substantial burden, we may still uphold it if it serves a compelling government interest in the least restrictive manner possible. 42 U.S.C. § 2000bb-1(b). \*\*\* A statute burdens the free exercise of religion if it "put[s] substantial pressure on an adherent to modify his behavior and to violate his beliefs," *Thomas v. Review Bd. of Ind. Employment Sec. Div.*, 450 U.S. 707, 718 (1981), including when, if enforced, it "results in the choice to the individual of either abandoning his religious principle or facing criminal prosecution." *Braunfeld v. Brown*, 366 U.S. 599, 605 (1961). A substantial burden must be more than an "inconvenience." *Worldwide Church, 227 F.3d at 1121.*" *Guam v Guerrero*, Docket No. 00-71247 at 7712-13.

On June 27, 2004, the Utah Supreme Court determined, in the case of *Utah v Mooney*, that non-American Indian members of the Native American Church can use peyote in religious ceremonies. In 2000 officers confiscated about 12,000 peyote buttons from the six-acre complex that serves as home to the Oklevueha Earthwalks Native American Church. The Mooneys' church is affiliated with the Native American Church, though they are not members of a federally recognized tribe. The State argued there is no exception in state law for the use of peyote by Indians and said that even if the court ruled there was such an exception, it could not be extended to cover non-Indians. The high court ruled that state law incorporates the federal regulation but does not specify a restriction on peyote use only by members of federally recognized tribes. Use of the hallucinogenic drug is limited to bona fide religious ceremonies as part of the Native American Church, Justice Jill Parrish wrote. The court also said that permitting the exemption for some church members and not others would violate the equal-protection clause in the United States Constitution. <http://www.utcourts.gov/opinions/supopin/mooney062204.htm>.

The Supreme Court, in 2006, under the leadership of its new Chief Justice Roberts, reaffirmed the efficacy of the statute, stating, the "Restoration Act of 1993 (RFRA), 107 Stat. 1488, as amended, 42 U. S. C. §2000bb et seq., ... adopts a statutory rule .... Under RFRA, the Federal Government may not, as a statutory matter, substantially burden a person's exercise of religion, "even if the burden results from a rule of general applicability." §2000bb-1(a). The only exception recognized by the statute requires the Government to satisfy the compelling interest test—to "demonstrat[e] that application of the burden to the per-son—(1) is in furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling governmental interest." §2000bb-1(b). A person whose religious practices are burdened in violation of RFRA "may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief." §2000bb-1(c)." *Gonzales v O Centro*, No. 04-1084. Argued November 1, 2005—Decided February 21, 2006.

The most important recent Supreme Court development in the area of First Amendment Freedom is the well-known Boy Scout case - (*Boy Scouts v Dale*, No. 99-699, Decided June 28, 2000). The Court reiterated that Freedom of Speech and Freedom of Association together give rise to what the Court calls "Expressive Association" which is the expression of the association's beliefs through its internal decisions and activities. These are protected by Constitutional Right, "While the law may promote all sorts of conduct in place of harmful behavior, it may not

interfere with speech for no better reason than promoting an approved message or discouraging a disfavored one, however enlightened either purpose may seem... The record reveals... the Boy Scouts is a private association..."

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### *Conclusion*

Yeshua the Nazirite taught his followers to "render unto Caesar the things which are Caesar's". He was adroitly avoiding, as the incident in the Bible makes clear, expressing an opinion regarding the Roman Empire's taxes. Jesus continued, "and render unto God the things which are God's". Ever since, the question of the State's authority and Religion's rights have been of central concern in Western religious and legal philosophy. We have seen how this conflict has been resolved, at present, in America. The tax (and other laws) we have discussed are part of that resolution, for, as our first Supreme Court said, "the power to tax is the power to destroy," and Congress has made it the law that the government may never use this power to destroy the independence and capacity to act of American churches. This is the Law of the Land and should be defended by all freedom-loving and religiously oriented people.

For centuries, alternative believers have been among the chief supporters of the separation of church and state. We defend not only the right to believe, but also the right to act non-invasively upon those beliefs. Truly, among the most fundamental Human Rights is the right to believe and to act upon those beliefs. In this area we have come a long way since the official state churches of past centuries, but, with the possibility of continuing political pressure on all churches, we may have a long way to go. It is only through the spiritual courage of many religiously oriented people, no matter what their denominations or beliefs, that the special status of religion in America can be preserved and enhanced. Like the Friends of old, we must be willing to "speak Truth" to enable us to carry on our religious missions for the benefit of all.

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The information in this article is not a substitute for personal legal advice. Individual circumstances vary and any minister or religious worker who seeks the benefits of the law should seek legal, financial and accounting advice geared to their individual needs.

LifeSpirit Center, [www.lifespirtcenter.org](http://www.lifespirtcenter.org)

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