STATE AND LOCAL TAXATION—CHURCHES—ADMINISTRATIVE OFFICES OF RELIGIOUS ASSOCIATION HELD NOT EXEMPT

In *Leggett v. Macon Baptist Ass'n*,[1] the Supreme Court of Georgia faced a question of the interpretation of the constitutional and statutory clauses exempting "places of religious worship" from ad valorem taxation.[2] The case arose when the property of the Macon Baptist Ass'n was transferred from exempt status to the regular tax rolls.[3] The Association sought judicial relief, claiming that the exclusive use of the property was for missionary good works, an essential element of Baptist theology, and the property should therefore be exempt as a "place of religious worship." The Superior Court of Bibb County accepted the argument and granted the Association's motion for summary judgment.[4] The supreme court reversed, holding that a "place of religious worship" is property used primarily for congregational services involving traditional religious ritual. The Macon Baptist Ass'n property did not conform to this definition and was therefore not entitled to exemption.[5]

Tax exemptions and governmental support for religious bodies have been granted throughout the history of organized religion.[6] Established religions were common in the American colonies, and were retained in some instances after the formation of the Republic.[7] Even after the first amendment to the United States Constitution was held applicable to the states,[8] religious tax exemptions were continued.[9] The practice is still followed, but differences in specific state provisions and judicial interpretations[10] have created great diversity in the actual scope of exemptions

1. 232 Ga. 27, 205 S.E.2d 1197 (1974).

2. GA. CONST. art. VII, §4 (1945), GA. CODE ANN. §2-5404 (Rev. 1973): "The General Assembly may, by law, exempt from taxation . . . places of religious worship . . . ." The exemption is enacted in essentially the same terms. GA. CODE ANN. §92-201 (Rev. 1974).

3. The impetus for the transfer came from a letter dated June 4, 1971, from the state Revenue Commissioner, Mr. John Blackmon, to the Chairman of the Bibb County Board of Assessors, Mr. J. A. Leggett, directing Mr. Leggett that the property of the Macon Baptist Ass'n, and other described property, did not properly belong in any of the exempt categories of property.

4. 232 Ga. at 27, 205 S.E.2d at 198.

5. *Id.* at 32, 205 S.E.2d at 200.

6. Alstyne, *Tax Exemption of Church Property*, 20 OHIO ST. L. J. 461-62 (1959); Editorial, *Churches and Tax Exemption*, 11 J. CHURCH & STATE 197 (1969).

7. M. BATES, RELIGIOUS LIBERTY: AN INQUIRY 89 (1945); E. SMITH, RELIGIOUS LIBERTY IN THE UNITED STATES 69-70 (1972).

8. Everson v. Board of Educ., 330 U.S. 1 (1947).

9. Kauper, *The Walz Decision: More on the Religion Clauses of the First Amendment*, 69 MICH. L. REV. 179, 182-83 (1970).

10. *Compare* MASS. ANN. LAWS ch. 59, 5 (1971) *with* ILL. ANN. STAT., ch. 120, §500.2 (Rev.

granted. Moreover, there is a growing trend toward stricter enforcement and interpretation of religious exemptions as the amount of church property and the need for greater government revenue steadily rise.[11] The legality and practicality of the religious tax exemption in any form has become a matter of popular debate.[12] In 1969 the constitutionality of the religious property tax exemption was upheld by the United States Supreme Court,[13] but this decision did not conclusively settle the matter. The proliferation of articles following the decision shows a continuing concern with the exemption question.[14]

There has been little controversy over the religious tax exemption in Georgia, primarily because of the benevolently broad interpretation of the religious exemption clause by tax officials. However, the inclusion of parsonages as "places of religious worship" was challenged, and exemption was denied by the supreme court[15] but later restored by constitutional amendment.[16] The Georgia Supreme Court also denied exemption to a Presbyterian Center performing missionary good works.[17] The center, however, had sought exemption under the provisions relating to public charity;[18] the possibility of exemption as a "place of religious worship" was not discussed.

The most significant decision on religious tax exemptions in Georgia is *Church of God of the Union Assembly, Inc. v. City of Dalton.*[19] The case involved the tax status of various income producing facilities in several church buildings. There the court alluded to three controlling principles: (1) the decisive factor in determining exemption status is not mere ownership but also the primary use of the property involved;[20] (2) property used primarily for income production is not exempt even though the income is devoted exclusively to religious purposes;[21] (3) all exemptions are to be

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1970) *and* Serra Retreat v. Los Angeles County, 35 Cal.2d 755, 221 P.2d 59 (1950) *with* Town of Woodstock v. The Retreat, Inc., 125 Conn. 52, 3 A.2d 232 (1938). *See also* Alstyne, *Tax Exemption of Church Property*, note 6 *supra*.

11. *See Churches and Tax Exemption*, note 6 *supra*.

12. *See, e.g.*, Brancato, *Characterization in Religious Property Tax-Exemption: A Survey and a Proposed Definition and Approach*, 44 N.D.L.REV. 60 (1968).

13. Walz v. Tax Comm'n of City of New York, 397 U.S. 664 (1961).

14. *See, e.g.*, Note, *Constitutional Law: Religious Tax Exemptions—Property Tax Exemptions for Religiously Owned Property Used Solely for Religious Purposes Held Not Violative of the Religious Clauses of the First Amendment*, 16 VILL. L. REV. 374 (1973); Burns, *Constitutional Aspects of Church Taxation*, 9 COLUM. J.L. & SOC. PROB. 646, 659 (1973); Note, *Constitutional Law: The Constitutionality of Church Property Tax Exemptions Upheld by the "Benevolent Neutrality" of the Supreme Court*, 20 DEPAUL L. REV. 252 (1970).

15. Wardens of St. Mark's Church v. Mayor of Brunswick, 78 Ga. 541, 3 S.E. 561 (1887).

16. Ga. Laws, 1955, p. 262.

17. Presbyterian Center, Inc. v. Henson, 221 Ga. 750, 146 S.E.2d 903 (1966).

18. GA. CODE ANN. §92-201 (Rev. 1974).

19. 216 Ga. 659, 119 S.E.2d 11 (1961).

20. *Id.* at 662, 119 S.E.2d at 13.

21. *Id.*

strictly construed in favor of taxation.[22] In applying these principles, the court in *Dalton* held that the income producing dining facility within the main church building did not destroy the tax exempt status of the property, but a separate building rented for profit was not exempt.

Following the principles relied on in the *Dalton* decision, the supreme court in *Macon Baptist* had to determine for tax purposes whether the property in question was used primarily as a "place of religious worship." The Macon Baptist Ass'n is an organization of forty-seven Baptist churches established for cooperation and coordination of missionary activities. The staff is composed of an associational minister, his secretary, and a weekday ministries coordinator. The work of staff members is analogous to that of their counterparts within the member churches, except that they serve the entire association rather than any specific congregation. Originally the staff office space was donated by member churches; the exempt status of these offices was never questioned.[23] The present location, a small residential building, consists of three staff offices, kitchen, restrooms, and a large meeting room which serves alternatively as a conference room for the Associational Council, a meeting place for member church organizations, and, infrequently, as a chapel for conventional religious services. The building is primarily used for the administrative work of the Association, and for the promotion, organization, and coordination of mission work and member church activities.

The supreme court noted in *Macon Baptist* that worship has been defined as the "act of paying divine honors to a deity; religious reverence and homage,"[24] and the court conceded the validity of the Association's contention that "service through good works is among the highest forms of love, homage, and reverence to God."[25] Nevertheless, adhering to the principle of strict construction in favor of taxation, the court adopted a more restrictive definition. Religious worship, the court held, refers to the "generally accepted . . . terms of congregational worship services"[26] which in Christian churches involves sermons, hymns, prayers, scripture reading, and the ritual of sacraments such as confirmation and marriage. The Macon Baptist Ass'n does not participate in religious worship as defined, therefore, the court held, the Macon Baptist Ass'n cannot claim religious exemption.

The court rejected the Association's contention that any definition of religious worship which omits good works is discriminatory against those denominations whose theology requires it. Since the exemption standard would be applied equally to all "religious associations similarly situated,"[27]

22. *Id.* at 661, 119 S.E.2d at 13.
23. *See* note 3 *supra*.
24. 232 Ga. at 31, 205 S.E.2d at 200.
25. *Id.*
26. *Id.*
27. *Id.* at 33, 205 S.E.2d at 201.

the court reasoned, the definition does not discriminate against the Macon Baptist Ass'n.[28]

Critical examination of *Macon Baptist* reveals no major flaws inherent in the reasoning of the court. The cases cited from other jurisdictions are distinguishable in law and fact; however, the court was aware of this fact and asserted that the persuasive element of these cases was not the specific holdings, but the validly perceived intention to limit the religious exemption to structures commonly acknowledged to be churches.[29]

A greater difficulty arises from the court's tendency to insert the word "public" into the phrase "place of religious worship." In the court's own summary of its reasoning, it grounds its conclusion on its "finding that the property is not open as a public place of worship."[30] The question of public services was unnecessary to the decision, since the property was not used primarily for congregational services of any kind, public or private. There is perhaps a possibility that the court was anticipating future questions, but the unexplained insertion only weakens the logic of the decision in the present case.

The logical conclusions of the court in *Macon Baptist* notwithstanding, a major dilemma is created when the *Dalton* test of primary use is considered in conjunction with the *Macon Baptist* definition of religious worship. Modern churches are rarely mere sanctuaries used for congregational services alone. They often include classrooms, dining facilities, audio-visual rooms, administrative offices for the minister and other officials, and even recreation centers and social halls. The assortment of uses of property owned by religious organizations, and the portion of property allocated to these different uses, vary with each church. There is no apparent basis on which tax officials can distinguish between those structures which are used primarily for congregational services but incidentally for other uses, and those structures which are used primarily for other uses but incidentally for congregational services. Attempts to make a distinction may result in charges of arbitrary and discriminatory enforcement which will be difficult to counter because of the inadequate standards of *Dalton* and *Macon Baptist*. The only practical method of applying the two decisions is to presume predominance of religious use in any structure where congregational services are involved. This would severely limit the impact of the *Dalton* decision—that the decisive factor in determining tax status is the primary use of the property involved—and would leave this area of the law in a state of confusion once more.

There are three potential legislative solutions to the present dilemma. The legislature could amend the constitutional and statutory provisions to include those religious activities rejected by the *Macon Baptist* decision.

28. *Id.*
29. *Id.* at 31, 205 S.E.2d at 200.
30. *Id.* at 32, 205 S.E.2d at 201.

This would relieve the injustice of the present arrangement, but increase the burden on the non-exempt taxpayer. Alternatively, all religious exemption from ad valorem taxation could be terminated. While this solution has increasing national appeal, it probably stands little chance of success in Georgia. A third solution, suggested as long ago as 1888, is "a due apportionment of values in the assessment, so as to confine the exemption to so much of the value as the privileged part of the premises represents."[31] The portion of the church property actually used for "religious worship" as defined in *Macon Baptist* would remain exempt, but those portions used in the same manner as the property of the Macon Baptist Ass'n, and those portions used for recreational and social activity would then share the same tax burden that has been imposed on the Macon Baptist Ass'n.

The *Macon Baptist* decision, taken in conjunction with the *Dalton* decision, is too unworkable to be a final settlement of the religious tax exemption question, but it may prove to be the necessary impetus to a legislative reevaluation of the issue. Until then, auxiliary religious activities would be well advised to locate under the protective wings of congregational services.

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31. Massenburg v. The Grand Lodge F.&A.M., 81 Ga. 212, 218-19, 7 S.E. 636, 638 (1888).