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Recent Developments: Jimmy Swaggert Ministries v. Board of Equalization of California: State Sales and Use Tax on Religious Material Is Not Violative of the First Amendment's Religion Clauses

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Jimmy Swaggert Ministries v. Board of Equalization of California: STATE SALES AND USE TAX ON RELIGIOUS MATERIAL IS NOT VIOLATIVE OF THE FIRST AMENDMENT'S RELIGION CLAUSES

In *Jimmy Swaggert Ministries v. Board of Equalization of California*, 110 S. Ct. 688 (1990), the United States Supreme Court held the the imposition of California's general sales and use tax on religious materials sold and distributed by a religious organization was not prohibited under the First Amendment's Free Exercise and Establishment Clauses. The Court cautioned, however, that its findings were limited to the particular tax at hand, and that similar taxes imposed on religious materials could very well constitute a constitutionally significant burden on religious practices and beliefs.

Appellant, Jimmy Swaggert Ministries, is a religious organization incorporated as a Louisiana nonprofit organization and recognized as such by the Internal Revenue Service. Its purpose, as set forth in its constitution and by-laws, is to "establish[] and maintain[] an evangelistic outreach for the worship of Almighty God." *Id.* at 691. In fulfilling this purpose, the organization regularly conducts evangelistic crusades across the nation, at which it sells and distributes certain religious and nonreligious items. The organization also publishes and distributes nationwide a monthly magazine, "The Evangelist," which contains advertisements for saleable religious and nonreligious items with corresponding mail-order forms. *Id.* at 691-92.

Under California law, retailers are required to pay a 6% sales tax on all tangible personal property sold within the state. In addition, out-of-state retailers selling tangible personal property to California residents are required to collect from said purchasers a 6% use tax. During the tax period from 1974 through 1981, Appellant failed to pay the applicable sales and use taxes on religious items it sold to California residents. In 1980, the Board of Equalization of California informed Appellant that sales of religious materials were not exempt from tax. The following year, the Board audited Appellant and advised it to register as a seller and report and pay all taxes accruing from sales it made through mail-orders in California and at its California crusades. The Board estimated that Appellant earned $1,702,942.00 from mail order sales and $240,560.00 from crusade merchandise sales during the tax period. Based on these figures, the Board assessed $118,294.54 for sales and use taxes, an additional $36,021.11 in interest, and a penalty of $11,829.45, totalling $166,145.10 owed by Appellant.

Appellant filed a petition for redetermination with the Board, asserting that the State's imposition of tax liability on the sale of religious materials violated the first amendment. On review, the Board deleted the penalty originally assessed, but otherwise held that the Appellant was liable for the adjusted amount plus interest. Pursuant to state procedural law, the Appellant paid the taxes and filed for a refund, which the Board subsequently denied. Appellant then filed suit in state court which entered judgment for the Board. The California Court of Appeals affirmed the lower court decision, and the California Supreme Court denied discretionary review. The United States Supreme Court noted probable jurisdiction pursuant to 28 U.S.C. § 1257 (2).

Before the Supreme Court, Appellant argued that the imposition of the State's sales and use tax on religious materials contravenes both the Free Exercise and the Establishment Clauses of the First Amendment. Appellant also asserted that the imposition of the State's use tax was violative of the Commerce and Due Process Clauses. The Supreme Court, however, limited its review strictly to Appellant's first amendment assertions and declined to address the merits of the remaining claim for procedural reasons.

The Free Exercise Clause of the First Amendment prohibits a state or federal legislative body from exerting any restraint on the free exercise of religion. *Id.* at 693. In deciding whether the State's imposition of tax was valid under the Free Exercise Clause, the Court stated the the appropriate inquiry is "whether [the] government has placed a substantial burden on the observation of a central religious belief or practice and, if so, whether a compelling governmental interest justifies the burden." *Id.* (quoting *Hernandez v. Commissioner,* 490 U.S. 680, 699 (1989)). The Appellant in the case *sub judice*, thereby asserted that "the State's imposition of use and sales tax liability on it burden[ed] its evangelical distribution of religious materials . . .," relying heavily on *Murdock v. Pennsylvania,* 319 U.S. 105 (1943) and *Follett v. McCormick,* 321 U.S. 573 (1944). *Id.*

In *Murdock,* the Supreme Court reversed the convictions of Jehovah's witnesses who were arrested for distributing religious material without a license, in violation of a city ordinance which required that all persons canvassing or soliciting procure a license by paying a flat fee. The Court struck down the ordinance as unconstitutional because the license tax imposed was "levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment [since]. . . *it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise.*" *Jimmy Swaggert Ministries,* 110 S. Ct. at 694 (quoting *Murdock,* 321 U.S. at 113-14 (emphasis added)). Similarly in *Follett,* the Supreme Court invalidated an ordinance which required all booksellers to procure a license to sell books by paying a flat fee. Again, this particular tax was deemed unconstitutional because it acted as a prior restraint on constitutionally protected religious conduct. Despite this conclusion, however, the Court cautioned that "a preacher is not 'free from all financial burdens of government, including taxes on income or property' and, 'like other citizens, may be subject to *general* taxation.'" *Id.* at 694 (quoting *Follett,* 321 U.S. at 578).

In the case *sub judice,* the Court determined that Appellant's reliance on the aforementioned case law was misplaced. In its reasoning, the Court noted that although Appellant's religious exercise deserves a high claim to constitutional protection, it nevertheless has not been significantly burdened by a "general" sales and use tax that does not operate as a prior restraint, and which "'is not a flat tax, represents only a small fraction of a retail sale, and applies *neutrally* to all retail sales of tangible personal property made in California." *Jimmy Swaggert Ministries* 110 S. Ct. at 695 (emphasis added). Moreover, the Court stated that the registration requirement under California law did not act as a prior restraint because it required no prepayment of a fee and the tax was due regardless of preregistration. *Id.* at 696 (see Cal. Rev. & Tax Code Ann. §§ 6066-74(West 1987 & Supp. 1989)). The Court, therefore, concluded that the general sales and use tax at issue was more akin to a generally applicable income or property tax, and thus did not violate the Free Exercise Clause of the First Admendment.

Appellant also argued that the general tax imposed a significant burden on its exercise of religious beliefs because the tax and costs associated with administering it greatly reduced Appellant's income by lowering the demand for wares caused by the marginally higher price. However, relying on *Hernandez v. Commissioner,* 490 U.S. 680 (1989) (holding that the Government's disallowance of a tax deduction for religious "auditing" and "training" services did not violate the Free Exercise Clause), the court stated that "any such burden is not constitutionally significant." *Jimmy Swaggert Ministries,* 110 S. Ct. at 696. Recognizing that

Appellant incurred some cost in complying with the generally applicable sales and use tax, the Court noted that Appellant is no more burdened by the imposition of such tax than it is by other generally applicable regulations, such as health and safety regulations, with which Appellant already complies. *Id.*

In its next argument, the Appellant contended that under *Lemon v. Kurtzman,* 403 U.S. 602 (1971), the imposition of the sales and use tax was violative of the Establishment Clause in that it "foster[ed] 'an excessive government entanglement with religion'. . . [by requiring] on-site inspections of appellant's evangelistic crusades, lengthy on-site audits, examinations of appellant's books and records, threats of criminal prosecution, and layers of administrative and judicial proceedings." *Id.* at 697 (quoting *Lemon,* 403 U.S. at 613). In addressing this contention, the Court focused on whether the imposition of the tax resulted in an "excessive 'involvement between appellant and the State and' continuing surveillance leading to an impermissible degree of entanglement," as provided under *Walz v. Tax Comm'n of New York City,* 397 U.S. 664 (1970); *Jimmy Swaggert Ministries,* 110 S. Ct. at 698. In holding that the spirit and values of the Establishment Clause were not even remotely at issue in this case, the Court noted that

> the [tax] statutory scheme requires neither the involvement of state employees in, nor on-site continuing inspection of, appellant's day-to-day operations . . . [and] [m]ost significantly, [it] does not require the State to inquire into the religious content of the items sold or the religious motivation for selling or purchasing the items, because the materials are subject to the tax regardless of content or motive.

Id. at 699. Furthermore, the Court rejected Appellant's assertion that the collection and payment of the tax imposed upon it a severe accounting burden. The Court stated that this allegation was clearly unsupported by the record which showed that any such burden was significantly eased by Appellant's sophisticated accounting staff and computerized accounting system. Even if substantial, the Court added that such record-keeping and administrative burdens do not rise to a constitutionally significant level. *Id.* at 698.

Finally, the Appellant asserted that the use tax imposition violated the Commerce and Due Process Clauses because of and insufficient "nexus" between the State and itself as an out-of-state retailer. The Court, however, refused to address the merits of this claim due to the fact that the claim was procedurally barred under California state law. Therefore, the Court concluded that the claim was not properly before it.

This case is significant in that it addresses a classical first admendment issue pertaining to religion and the free exercise thereof, yet adapts it to a more modernistic view. Today, more and more evangelists are themselves excessively entangling religious and commercial activities, thereby making it difficult to distinguish between the two. However, the Supreme Court has attempted to remedy this confusion by upholding tax impositions on the sale of both religious and non-religious materials; the determinative test being whether the tax can be neutrally imposed regardless of content, whether it acts as a prior restraint on religious liberty, and whether any State activities in imposing the tax can remain detached and neutral from the religious organization itself.

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Tafflin v. Levitt: STATE COURT JURISDICTION OVER CIVIL RICO CLAIMS NOT PREEMPTED

In *Tafflin v. Levitt,* 110 S. Ct. 792 (1990), the United States Supreme Court determined that state courts have concurrent juridiction over civil actions brought under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-68.

Following the failure of Old Court Savings & Loan, Inc. (hereinafter "Old Court"), the petitioners, non-residents of Maryland holding unpaid certificates of deposit issued by Old Court, instituted an action in federal district court against the respondents, former officers and directors of Old Court, the Maryland Savings-Share Insurance Corporation (hereinafter "MSSIC"), former officers and directors of MSSIC, Old Court and MSSIC's law firm, and Old Court's accounting firm. In the complaint, the Petitioners alleged several state law claims, a claim under the Securities and Exchange Act of 1934 (herinafter "Exchange Act"), and a civil claim under RICO. The Respondents filed a Motion to Dismiss which was granted by the district court for two reasons. First, the district court granted the Respondent's motion concluding that the Petitioners failed to state a claim under the Exchange Act. The district court also determined that the Petitioners' civil RICO claims would be disposed of in a pending state court action. Because the district court belived that state courts have concurrent jurisdiction over these claims, it determined that federal abstention was appropiate. The district court ruling was affirmed by the Fourth Circuit Court of Appeals. *Tafflin v. Leritt,* 865 F.2d 595(4th Cir. 1989). The Supreme Court granted certiorari solely for the purpose of determining whether a state court has concurrent jurisdiction over civil RICO claims.

In reaching its decision, the Supreme Court began by emphasizing the deep rooted presumption in favor of concurrent state court jurisdiction. This presumption is rebuttable only upon a showing that: (1) there is an explicit congressional statute granting exclusive federal court jurisdiction; (2) there is an unmistakable implication from legislative history demonstrating Congressional intent to grant exclusive jurisdiction to the federal courts; or (3) there is a clear incompatibility between state court jurisdiction and federal interests. *Tafflin,* 110 S. Ct. at 795 (quoting *Gulf Offshore Co. v. Mobile Oil Corp.,* 453 U.S. 473, 478 (1981)).

Applying the *Gulf Offshore* factors, the Court rejected the idea that state courts have been divested of jurisdiction over civil RICO actions "by an explicit statutory directive." *Id.* at 795, (quoting *Gulf Offshore,* 453 U.S. at 478). Further, as the Petitioners conceded, there was no express language in RICO granting exclusive federal juridiction over civil RICO claims. The jurisdictional grant in RICO provides: "[a]ny person injured in his business or property by reason of a violation of section 1962 of this chapter *may* sue therefor [sic] in any appropriate United States district court . . . ." *Id.* at 796 (quoting 18 U.S.C. § 1964(c)) (emphasis in orginal). The Court found Congress' use of "may" in RICO presuasive and noted that "[i]t is black letter law . . . that the mere grant of juridiction to a federal court does not operate to oust a state court from concurrent jurisdiction over the cause of action." *Id.* (quoting *Gulf Offshore,* 453 U.S. at 479). Accordingly, the Court found the grant of federal jurisdiction over RICO cases to be permissive, not mandatory. *Id.*

Next, the Court considered the legislative history of RICO. The Court found no evidence that Congress considered the question of concurrent state court jurisdiction over civil RICO claims, much less any suggestion of congressional intent to confer exclusive jurisdiction on the federal courts. The Petitioners posed two arguments. First they contended that if Congress had addressed the issue it would have granted the federal courts exclusive jurisdiction. The Court rejected this argument refusing to speculate as to Congress' intent. *Id.*

Alternatively, the Petitioners relied on dicta in *Sedima, S.P.R.V.L. v. Imrex Co.,* 473 U.S. 479 (1985) and *Agency Holding*