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lowing administrators to concentrate on policymaking and supervisory functions, rather than participation in protracted discovery and litigation, should improve the efficiency of the administrative system in Minnesota.

Constitutional Law—CHURCH PROPERTY TAX EXEMPTION—*Ideal Life Church of Lake Elmo v. County of Washington*, 304 N.W.2d 308 (Minn. 1981).

Religious organizations have long enjoyed a variety of exemptions from property and income taxes.¹ Tax exemptions for church property date from colonial times in the United States and from as far back as the third century in Europe.² Church property tax exemptions in this country have traditionally rested on statutory or constitutional provisions.³ A

1. Religious tax exemptions pre-date the Revolutionary War. *Walz v. Tax Comm'n*, 397 U.S. 664, 676-77 (1970). Federal income taxation has always exempted religious organizations. *See* Act of Aug. 27, 1894, ch. 349, § 32, 28 Stat. 509, 556; Act of Oct. 3, 1913, ch. 16, § IIG(a), 38 Stat. 114, 172; I.R.C. §§ 501-515 (1976 & Supp. V 1981).

2. *See* Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation*, 14 LAW & CONTEMP. PROBS. 144, 147-48 (1949); Van Alstyne, *Tax Exemption of Church Property*, 20 OHIO ST. L.J. 461, 461-62 (1959); Zollman, *Tax Exemptions of American Church Property*, 14 MICH. L. REV. 646, 647-50 (1916).

3. *See, e.g.*, Parker v. Commissioner of Internal Revenue, 365 F.2d 792, 795 (8th Cir. 1966); *Lundberg v. County of Alameda*, 46 Cal. 2d 644, 648, 298 P.2d 1, 4 (1956).

Minnesota's church property exemption is statutory. *See* MINN. STAT. § 272.02 (1982). The church property tax exemptions of Florida, Maine and Michigan are similar to Minnesota's. *See* FLA. STAT. § 196.191 (1971); ME. REV. STAT. ANN. tit. 36, § 652 (1978); MICH. COMP. LAWS § 211.7 (1967).

Examples of statutes requiring only ownership by religious organizations include CONN. GEN. STAT. ANN. § 12-81 (West Supp. 1982); DEL. CODE ANN. tit. 9, § 8103 (1975); and S.C. CODE ANN. § 12-37-220(3) (Law Co-op. Supp. 1982).

Use-based statutes are classified further as to type of use. *See* KY. CONST. § 170 ("places actually used for religious worship"); PA. STAT. ANN. tit. 72 § 5020-204 (Purdon Supp. 1983) ("actual places of regularly stated religious worship"); VT. STAT. ANN. tit. 32, § 3802 (1981).

Some exemptions focus on the nature of the use, e.g., primarily or exclusively religious or non-profit. *See* ALA. CODE § 40-9-1 (Supp. 1982) (exclusive); ALASKA CONST. art. 9, § 4 (exclusive, non-profit); ARIZ. REV. STAT. ANN. § 42-271 (Supp. 1982) (non-profit); ARK. STAT. ANN. § 84-206 (1980) (exclusive); COLO. REV. STAT. § 39-3-101(e) (1973) (primary); D.C. CODE ANN. § 47-1002(13) (1981) (same); GA. CONST. § 2-4604 (non-profit); HAWAII REV. STAT. § 246-32(b)(3) (1976) (same); IDAHO CODE § 63-105B (1976) (exclusive); ILL. REV. STAT. ch. 120, § 500.2 (Smith-Hurd Supp. 1982) (exclusive, non-profit); IOWA CODE ANN. § 427.1.9 (West Supp. 1983) (same); KAN. STAT. ANN. § 79-201 (Supp. 1982) (same); LA. CONST. art. 7, § 21(b)(1) (exclusive, non-profit); MD. ANN. CODE art. 81, § 9(c) (1975) (exclusive); MO. REV. STAT. § 137.100 (Vernon Supp. 1983) (exclusive, non-profit); N.J. STAT. ANN. § 54:4-3.6 (West Supp. 1983) (exclusive); N.M. CONST. art. VIII, § 3 (non-profit); N.D. CENT. CODE § 57-02-08(7) (Supp. 1981) (exclusive); OHIO REV. CODE ANN. § 5709.07 (Page 1980) (exclusive, non-profit); OKLA. STAT. ANN. tit. 68 § 2405(g) (West 1966) (exclusive); OR. REV. STAT. § 307.140 (1981) (same); R.I. GEN. LAWS § 44-3-3 (Supp. 1982) (same); S.D. CODIFIED LAWS ANN. § 10-4-9 (1982) (same); TEX. TAX CODE ANN. § 11.20 (Vernon 1982) (primary, non-profit); UTAH CODE ANN.

historical study of American churches reveals several justifications for the existence of church property tax exemptions. First, there is America's strong commitment to religious freedom that finds its origin in the colonization of a land free from religious persecution.⁴ Second, religion is viewed as a social institution that promotes moral and mental improvement.⁵ Third, the tangible social benefits religion bestows on society significantly outweigh any revenues that taxation of church property would produce.⁶ Finally, tax exemption is viewed as less entangling than tax-

§ 59-2-1 (1953) (exclusive); VA. CODE § 58-12(2) (1974) (same); WASH. REV. CODE ANN. § 84.36.020 (Supp. 1983) (exclusive, non-profit); W. VA. CODE § 11-3-9 (1974) (exclusive); WIS. STAT. ANN. § 70.11(4) (West Supp. 1982) (same); WYO. STAT. ANN. § 39-1-201(a)(vii) (1977) (same).

Some statutes focus on both use and ownership. See CAL. REV. & TAX CODE § 214 (West Supp. 1983); IND. CODE § 6-1.1-10-21(a) (1981); MASS. GEN. LAWS ANN. ch. 59, § 5(11) (West Supp. 1983); MISS. CODE ANN. § 27-31-1(d) (Supp. 1982); MONT. CODE ANN. § 15-6-201 (1981); NEB. REV. STAT. § 77-202(c) (1981); NEV. REV. STAT. § 361.125(1) (1979); N.H. REV. STAT. ANN. § 72:23(III) (1971); N.Y. REAL PROP. TAX LAW § 421(1)(a) (McKinney 1972); N.C. GEN. STAT. § 105-278.3 (1979); TENN. CODE ANN. § 67-513 (Supp. 1982).

4. *Everson v. Board of Educ.*, 330 U.S. 1, 8-11 (1947).

A large portion of the early settlers of this country came here from Europe to escape the bondage of laws which compelled them to support and attend government-favored churches. The centuries immediately before and contemporaneous with the colonization of America had been filled with turmoil, civil strife, and persecutions, generated in large part by established sects determined to maintain their absolute political and religious supremacy.

Id. at 8-9. See generally L. PFEFFER, CHURCH, STATE, AND FREEDOM 71 (1967); W. SWEET, RELIGION IN COLONIAL AMERICA (1942). Some have argued that religious tax exemptions are required by the first amendment free exercise clause. See Schwarz, *Limiting Religious Tax Exemptions: When Should the Church Render unto Caesar?*, 29 U. FLA. L. REV. 50, 54-55 (1976).

5. *Walz v. Tax Comm'n*, 397 U.S. 664, 672-73 (1970). Some commentators have justified the tax exemption on the morally uplifting influence that religions and churches have on society. See Schwarz, *supra* note 4, at 54, 56; Stimson, *The Exemption of Property from Taxation in the United States*, 18 MINN. L. REV. 411, 422 (1934); cf. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952) ("[w]e make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary"). But see Paulsen, *supra* note 2, at 150; Comment, *Defining Religion: Of God, the Constitution and the D.A.R.*, 32 U. CHI. L. REV. 533, 549 n.82 (1965).

Other more objective justifications for religious tax exemptions are that it would be an uneconomic allocation of resources to tax socially valuable, privately organized activities, Giannella, *Religious Liberty, Nonestablishment, and Doctrinal Development*, 81 HARV. L. REV. 513, 549, 553 (1968), and that churches fall into the class of non-profit organizations that includes charitable and educational institutions. Paulsen, *supra* note 2, at 151 n.58. Although these justifications appear more objective, their underlying base is the social "good works" produced by religious organizations.

The "up-lifting influence" rationale is perhaps less compelling today with many religious organizations and their leaders becoming active in partisan politics. A religion or church that works for the establishment of its beliefs or doctrines through the political process is arguably not a benign wholesome charity welcomed by the public at large and above all reproach.

6. See Schwarz, *supra* note 4, at 54-56.

tion, and is therefore considered more in harmony with the free exercise clause.⁷

Like other tax exemptions, church property tax exemptions are in derogation of society's interest in equality of taxation.⁸ For this reason tax exemption statutes are strictly construed.⁹ The burden of proving exempt status is placed on the person or organization seeking the exemption.¹⁰ The use of the property, its reasonable relation to the accomplishment of the objectives of the institution that owns it, and the connection between these objectives and the legislative intent constitute the essentials of all property tax exemptions.¹¹

When the constitutionality of church property tax exemptions was challenged in the case of *Walz v. Tax Commission*,¹² the United States Supreme Court held that although such tax exemptions were not required by the first amendment, they were constitutional.¹³ The *Walz* Court noted that church property tax exemptions were a matter of legislative grace and that taxation of church property created the potential for direct confrontation between church and state and for greater gov-

7. See *Walz v. Tax Comm'n*, 397 U.S. 664, 674-75, 676 (1970). Another rationale for religious tax exemption is that because religious groups are non-profit organizations, exempting them from taxation confers no real benefit. See Schwarz, *supra* note 4, at 54, 56.

8. See, e.g., *Conference of Major Religious Superiors of Women, Inc. v. District of Columbia*, 348 F.2d 783 (D.C. Cir. 1965); *Community Hosp. Linen Servs., Inc. v. Commissioner of Taxation*, 309 Minn. 447, 245 N.W.2d 190 (1976).

9. "One of the rules that is well established is that taxation is the rule and exemption is an exception in derogation of equal rights. Therefore, there is a presumption that all property is taxable." 304 N.W.2d at 313, quoting *Camping & Educ. Found. v. State*, 282 Minn. 245, 250, 164 N.W.2d 369, 372 (1969); see also *Ramaley v. City of St. Paul*, 226 Minn. 406, 33 N.W.2d 19 (1948); *Church of Ramsey v. Church of the Good Shepherd*, 45 Minn. 229, 47 N.W. 783 (1891); *County of Hennepin v. Bell*, 43 Minn. 344, 45 N.W. 615 (1890); *St. Peters Church of Shakopee v. Board of County Comm'rs*, 12 Minn. 395, 12 Gil. 280 (1867).

10. See *Wilson v. United States*, 588 F.2d 1168 (6th Cir. 1978); *Co-Operative Grain & Supply Co. v. C.I.R.*, 407 F.2d 1158 (8th Cir. 1969); *Community Hosp. Linen Servs., Inc. v. Commissioner of Taxation*, 309 Minn. 447, 245 N.W.2d 190 (1976); cf. *Cirillo v. C.I.R.*, 314 F.2d 478 (3d Cir. 1963) (burden of establishing deduction on taxpayer); *Abex Corp. v. Commissioner of Taxation*, 295 Minn. 445, 207 N.W.2d 37 (1973) (presumption against exemption from taxation); *Camping & Educ. Found. v. State*, 282 Minn. 245, 164 N.W.2d 369 (1969) (presumption against exemption). But see *Passaic United Hebrew Burial Ass'n v. United States*, 216 F. Supp. 500, 505 (D.N.J. 1963) (construing I.R.C. §§ 501(a), (c)(3), court held that statutes relating to tax exemption for charitable or religious purposes should be liberally construed).

11. *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 541, 22 N.W.2d 642, 645 (1946); see *Christian Business Men's Comm. v. State*, 228 Minn. 549, 554, 38 N.W.2d 803, 808 (1949).

12. 397 U.S. 664 (1970).

13. Granting a property tax exemption guards against the constitutional danger of the financial oppression of churches without actually supporting the institutions. *Id.* at 672, 673, 676.

ernmental involvement in religious matters.¹⁴ Although the *Walz* decision reaffirmed the preferred status of religious organizations in our tax system, the recent proliferation of religious organizations established primarily to camouflage the use of illegal drugs¹⁵ or to avoid taxation¹⁶ has forced tax officials and courts to stringently define terms such as "church" and "religious purpose" and to deny exemptions to organizations that do not meet those definitions.¹⁷

The Minnesota Supreme Court in *Ideal Life Church of Lake Elmo v. County of Washington*¹⁸ decided that a religious organization was a subterfuge to avoid property taxation. The exemption was denied despite claims that the constitutional guarantees of free exercise of religion and against governmental establishment of religion were being impinged. In construing Minnesota's statutory and constitutional property tax exemptions for churches,¹⁹ the Minnesota court adopted a "multifactual analysis"²⁰ to determine whether a religious association was a "church" for property tax exemption purposes.²¹

The Ideal Life Church was incorporated pursuant to the Minnesota

14. *See id.* at 672-75. The desire to minimize church-state conflicts echoes the historical reason behind the first amendment principle of separation of church and state, a necessity dictated by the preservation of public peace. J. MURRAY, *WE HOLD THESE TRUTHS* 58-59 (1960); Kurland, *Of Church and State and the Supreme Court*, 29 U. CHI. L. REV. 1, 2-4 (1961). For a discussion on the purpose of the first amendment religion clauses, see Justice Rutledge's dissent in *Everson v. Board of Educ.*, 330 U.S. 1, 31-43 (1947).

15. *E.g.*, *Randall v. Wyrick*, 441 F. Supp. 312 (W.D. Mo. 1977); *People v. Mullins*, 50 Cal. App. 3d 61, 123 Cal. Rptr. 201 (1975); *Town v. State ex rel. Reno*, 377 So. 2d 648 (Fla. 1979), *appeal dismissed for want of jurisdiction*, 449 U.S. 803 (1980); *People v. Crawford*, 69 Misc. 2d 500, 328 N.Y.S.2d 747 (1972); *State v. Bullard*, 267 N.C. 599, 148 S.E.2d 565 (1966); *State v. Brashear*, 92 N.M. 622, 593 P.2d 63 (Ct. App. 1979); *Lewellyn v. State*, 592 P.2d 538 (Okla. Crim. App. 1979). For an analysis of the above-cited cases, see Comment, *Brave New World Revisited: Fifteen Years of Chemical Sacraments*, 1980 WIS. L. REV. 879.

16. "Mail order ministries" are examples of such religious organizations. Although courts have never expressly stated that their refusal to grant tax exempt status was on account of the tax-avoidance purpose of these organizations, the conclusion is implicit. *See Founding Church of Scientology v. United States*, 412 F.2d 1197 (Ct. Cl.), *cert. denied*, 397 U.S. 1009 (1969); *Universal Life Church, Inc. v. United States*, 372 F. Supp. 770 (E.D. Cal. 1974); *Golden Rule Church Ass'n*, 41 T.C. 719 (1964); *Saint Germain Found.*, 26 T.C. 657 (1956).

17. *See cases cited supra* notes 15 & 16.

18. 304 N.W.2d 308 (Minn. 1981).

19. MINN. CONST. art. X, § 1, provides in part that "all churches, church property, houses of worship . . . shall be exempt from taxation except as provided in this section."

The statutory exemption in Minnesota states that "[e]xcept as provided in other subdivisions of this section or in section 272.025 or section 273.13, subdivisions 17, 17b, 17c or 17d, all property described in this section to the extent herein limited shall be exempt from taxation: . . . (5) All churches, church property, and houses of worship." MINN. STAT. § 272.02, subd. 1(5) (1982) (originally enacted 1878 Minn. Laws. ch. 1, § 5).

20. 304 N.W.2d at 315-16.

21. *Id.* at 317.

religious association statute.²² Originally, the Ideal Life Church association comprised eleven members, all from the LeRoy Rossow family.²³ LeRoy Rossow was chairman, minister, and president of the church.²⁴ Shortly after incorporation, the Rossow residence, homesteaded since its construction in 1971 or 1972, was conveyed to the Ideal Life Church.²⁵ Rossow subsequently applied for a church property tax exemption.²⁶ The application was denied by the Washington County assessor, the local and county boards of review, the State Board of Equalization, and the tax court.²⁷ The Minnesota Supreme Court affirmed the denial.²⁸

In its decision the Minnesota Supreme Court adopted the tax court's test for determining whether an organization qualified for the church property tax exemption.²⁹ The Minnesota court held that the property must be owned by a "church"³⁰ and that it must be 'appropriately used'

22. MINN. STAT. § 315.21(1) (1982) provides:

The members of any church or religious society, not less than three in number, not wishing to form a corporation under any of the preceding provisions of this chapter, may become a corporation by adopting and signing a certificate containing:

1. Its name, general purpose and plan of operation, and its location; and
2. The terms of admission, qualification for membership, selection of officers, filling vacancies, and the manner in which the same is to be managed.

Prior provisions of the chapter deal with forming a corporation by trusteeship, parish, diocese or cathedral. *See* MINN. STAT. ch. 315 (1982). Originally, the Minnesota Constitution exempted church property "used for religious purposes" only, which indicates that the legislative intent behind the church property tax exemption was to exempt structures that were used as houses of public worship. *See* *St. Peter's Church of Shakopee v. Board of County Comm'rs*, 12 Minn. 395, 12 Gil. 280 (1867).

23. 304 N.W.2d at 310 n.3.

24. *Id.* at 310 n.2.

25. *Id.* at 310.

26. *Id.* at 311.

27. *Id.* at 310.

28. *Id.* at 317.

29. *Id.* at 315. This test is similar to the test used in charitable organization tax cases.

In Minnesota, a charitable tax exemption requires the organization to: 1) be organized and operated for the purpose of rendering aid, comfort, and assistance to the sick and indigent; 2) be supported and maintained in part by benevolent contributions; 3) be conducted without a view toward profit; 4) be open to the public generally without restriction; 5) be operated so as to lessen the burdens of government; 6) be organized and operated so that its charitable aids reach an indefinite number of people; 7) be organized and operated so that its commercial activities are subordinate to or incidental to charitable activities. *See* MINN. STAT. § 297A.25(1)(p) (1982). Section 297A.25(1)(p) exempts from sales tax the gross receipts from the sale of tangible personal property to charitable, religious or educational organizations. *See* *Mayo Found. v. Commissioner of Revenue*, 306 Minn. 25, 36, 236 N.W.2d 767, 772-73 (1975); *see also* *Camping & Educ. Found. v. State*, 282 Minn. 245, 164 N.W.2d 369 (1969); *State v. Evans Scholars Found.*, 278 Minn. 74, 153 N.W.2d 148 (1967); *Assembly Homes, Inc. v. Yellow Medicine County*, 273 Minn. 197, 140 N.W.2d 336 (1966); *State v. Bishop Seabury Mission*, 90 Minn. 92, 95 N.W. 882 (1903); *County of Hennepin v. Brotherhood of Gethsemane*, 27 Minn. 460, 80 N.W. 595 (1881).

30. 304 N.W.2d at 313. The court noted, "The only Minnesota case which even re-

by the church.³¹ Because the court found that the property was not owned by a church, it did not address the question of use.³²

The *Ideal Life* court provided an objective multifactorial analysis to determine whether an organization is a "church."³³ The analysis focused on the following eight factors: (1) whether the religious organization was organized primarily for tax avoidance purposes; (2) whether it had any formally trained or ordained ministers; (3) whether it had any sacraments, rituals, education classes or literature of its own; (4) whether it had a liturgy, other than simple meetings or social gatherings; (5) whether it required a belief in a supreme being; (6) whether it advanced its doctrines and beliefs as a way of life; (7) whether these beliefs were vague and non-binding upon its members; and (8) whether its members freely continued to practice other religions.³⁴

This analysis is a combination of the factors used by courts considering charitable organization tax exemptions³⁵ and the criteria used by the Internal Revenue Service when considering federal income tax exemptions for churches.³⁶ Both the charitable organization and income tax

motely indicates what sort of factors make up a 'church' for tax exemption purposes is *State v. Board of Foreign Missions of Augustana Synod*, 221 Minn. 536, 22 N.W.2d 642 (1946)." *Id.*

31. *Id.*

32. *Id.* at 313-15.

33. *Id.* at 313-15; see *supra* note 30 and accompanying text.

34. 304 N.W.2d at 315.

35. See *supra* note 29 and accompanying text.

36. Sections 501 and 170 of the Internal Revenue Code closely parallel the religious property tax exemption. Section 501 exempts institutions

organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment) or for the prevention of cruelty to children or animals

from federal income tax. I.R.C. § 501(c)(3) (1976). Contributions to § 501(c)(3) organizations are deductible for federal income tax purposes. I.R.C. §§ 170(a), (c)(2)(B) (1976).

Section 170 indicates that Congress intended a narrower definition of "church" than "religious organization." Section 170(c) includes organizations organized and operated exclusively for religious purposes in its definition of charitable contribution, however, only contributions to "a church or convention or association of churches" are deductible by the individual taxpayer in an amount up to 50% of his adjusted gross income. I.R.C. § 170(b)(1)(A) (1976). Other charitable contributions are deductible at a lower percentage. I.R.C. § 170(b)(1)(B) (1976). A § 501 "religious organization," therefore, may be denied "church" status under § 170. See *American Guidance Found., Inc. v. United States*, 490 F. Supp. 304 (D.D.C. 1980).

Two tests are used to determine whether a group is organized and operated exclusively for religious purposes under § 501: the organizational test and the operational test. Both tests must be met or the entity will be denied tax exempt status. See *Levy Family Tribute Found.*, 69 T.C. 615 (1978); *Treas. Reg. § 1.501(c)(3)-1(a)* (1980).

The organizational test is met if the members of a purported religious organization have a "sincere and meaningful" belief in the organization's doctrine, provided this belief occupies, in the lives of those members, a place parallel to that filled by God in the lives of

factors focus on the purpose of the organization and whether the exemption was intended to cover organizations with that purpose.

The multifactorial analysis adopted by the *Ideal Life* court presents two significant problems. First, the multifactorial analysis, with the exception of the first factor, attempts to define “church” or “religion” in objective terms.³⁷ The *Ideal Life* majority noted that “[t]here is no Minnesota case law or legislation defining the word ‘church.’”³⁸

Justice Wahl, in her concurring opinion, rejected the multifactorial analysis’ characterization of “church.” In her opinion, the majority’s definitions of “church” and “religion” were “unduly restrictive and traditional” for constitutional purposes.³⁹ Justice Wahl argued that the substance of an organization’s operation and the sincerity of belief of its members, not its form, should be the focus of the inquiry.⁴⁰ Justice

traditionally religious persons. INTERNAL REVENUE SERVICE, INTERNAL MANUAL SUPPLEMENT 7(10) G-37, at 5 (Mar. 15, 1979). This test is compelled by *United States v. Seeger*, 380 U.S. 163 (1965), where the Court held that the exemption from military training and service for those who conscientiously objected “by reason of religious training and belief” included applicants whose sincere and meaningful beliefs occupied a place in their lives equal to that filled by the orthodox belief in God of one clearly qualified for the exemption. *Id.* at 166.

The operational test is satisfied if the organization (1) engages primarily in activities which accomplish its religious purposes, (2) serves a public rather than a private interest, and (3) has net earnings which do not inure to the benefit of a private shareholder or individual. *See* Treas. Reg. § 1.501(c)(3) (1980).

Thus a “church” is merely a specialized form of “religious organization” and analysis of an organization purporting to be a “church” must begin with an examination of the sincerity of its members’ beliefs. It is interesting to note that after the Minnesota Tax Court rendered its decision on the *Ideal Life Church*, the Internal Revenue Service informed the Minnesota Attorney General’s office that the *Ideal Life Church* was not an exempt organization under I.R.C. § 501(c)(3) (1976). *See* 304 N.W.2d at 312.

For a detailed discussion of the administration of I.R.C. § 501 (1980), see Note, *Mail Order Ministries, The Religious Purpose Exemption, and The Constitution*, 33 TAX LAW. 959 (1980).

37. 304 N.W.2d at 315 (Wahl, J., concurring). Clearly no court wishes to embark on doctrinal examinations of a religious creed. *See* *United States v. Ballard*, 372 U.S. 78, 87 (1943).

38. 304 N.W.2d at 313.

39. *Id.* at 317-20.

40. *Id.* at 318. “The Tax Court and tax agencies are concerned with many kinds of tax fraud; therefore, the substance of the transaction or operation, not merely its form, must be examined for tax purposes.” *Id.* Justice Wahl pointed out that defining a church for tax exemption purposes does not necessarily prevent fraud; a definition merely provides a checklist for the clever tax dodger. Justice Wahl went on to say that

[t]he goal is not to show that a particular activity is not a church but “that the beliefs asserted to be religious are not held in good faith by those asserting them, and that forms of religious organization were erected for the sole purpose of cloaking a secular enterprise with the legal protections of religion.”

Id. at 318, quoting *Founding Church of Scientology v. United States*, 409 F.2d 1146, 1162 (D.C. Cir.), cert. denied, 396 U.S. 963 (1969); see also *Valente v. Larson*, 637 F.2d 562 (8th Cir. 1981).

Wahl's misgivings about the majority's reasoning point to the second problem with multifactual analysis, its possible unconstitutionality.

The multifactual analysis, with the exception of the "sham transaction" factor, provides a useful "checklist" for the creation of a fraudulent tax exemption. Well-established principles of tax law dictate the disregard of form when the intent of the organization is to avoid taxation.⁴¹ In reality, the "sham transaction" factor underlies the seven other questions used in the multifactual analysis. Defining a "church" beyond the perfunctory "sham transaction" test invites inevitably unsuccessful attempts to define what a religion is. Since courts typically avoid constitutional questions when there are dispositive nonconstitutional grounds for a decision,⁴² it is surprising that the Minnesota Supreme Court decided *Ideal Life* on such broad constitutional principles. Courts are ill-equipped to decide what constitutes a religion. An analysis looking to tax avoidance alone⁴³ would have led the *Ideal Life* court to the same conclusion without constitutional ramifications.

The major constitutional inadequacy of the multifactual analysis is the fifth factor, which looks for belief in a supreme being. It is left to conjecture how the supreme-being requirement is to be applied and whether non-theistic philosophies will constitute legitimate religions or churches. The United States Supreme Court has rejected theism as a requirement for religion, noting that Buddhism, Taoism, Ethical Culture, and Secular Humanism are accepted religions that do not require a belief in a supreme being.⁴⁴

41. See, e.g., *Higgins v. Smith*, 308 U.S. 473 (1940); *Boyter v. Commissioner*, 668 F.2d 1382 (4th Cir. 1981); *Owens v. Commissioner*, 568 F.2d 1233 (6th Cir. 1977).

42. Commenting on the well-established principle of avoiding unnecessary constitutional challenges, the United States Supreme Court recently noted: "This court will not pass on the constitutionality of an Act of Congress if a construction of the statute is fairly possible by which the question may be avoided." *United States v. Clark*, 445 U.S. 23, 27 (1980); see *Califano v. Yamaski*, 442 U.S. 682, 693 (1979); *New York City Transit Auth. v. Beager*, 440 U.S. 568, 582 & n.22 (1979); *United States v. Raines*, 362 U.S. 17, 21 (1960); *Spector Motor Serv., Inc. v. McLaughlin*, 323 U.S. 101, 105 (1944); *Ashwander v. TVA*, 297 U.S. 288, 346-37 (1936) (Brandeis, J., concurring); see also *Guy v. Rolvaag*, 233 F. Supp. 301 (D. Minn. 1964) (courts should avoid unnecessary decision of constitutional questions); *Midland Glass Co. v. City of Shakopee*, 303 Minn. 134, 226 N.W.2d 324 (1975) (case should be decided without determining constitutionality of statute if possible); *State ex rel. Gozback v. Common School Dist. No. 65*, 234 Minn. 150, 54 N.W.2d 130 (1952) (question of constitutionality not to be decided unless absolutely necessary); *State v. Meyer*, 228 Minn. 286, 37 N.W.2d 286 (1949) (courts should not decide constitutional issues if other grounds of decision are available).

43. See *Church v. United States*, 372 F. Supp. 770, 776 (E.D. Cal. 1974). An appropriately accommodating objective test seems more desirable. However, the potential constitutional problems inherent in a wooden objective standard necessitate a cautious formulation of such a standard. See Worthing, "Religion" and "Religious Institutions" Under the First Amendment, 7 PEPPERDINE L. REV. 313, 352 (1980).

44. See *Torcaso v. Watkins*, 367 U.S. 488, 496 n.11 (1961) (Maryland test of belief in existence of God as prerequisite for state office declared unconstitutional). This list is not

The *Ideal Life* decision is also constitutionally questionable because the first amendment establishment clause prohibits the government from becoming excessively entangled in the advancement of religion.⁴⁵ The Minnesota court's decision to utilize factors that examine an organization's belief in a supreme being fosters philosophical entanglement in theistic religions. If a state grants church property tax exemptions only to religious organizations that are theistic, then the state is excessively entangling itself in the advancement of theistic religions.

In *Lemon v. Kurtzman*⁴⁶ the United States Supreme Court addressed the constitutionality of Rhode Island and Pennsylvania statutes providing state aid to private, religiously oriented elementary and secondary schools.⁴⁷ The statutes were "challenged as violative of the establishment and free exercise clauses of the First Amendment."⁴⁸ In holding the statutes unconstitutional the *Lemon* Court stated:

The language of the Religion Clauses of the First Amendment is at best opaque. . . . Its authors did not simply prohibit the establishment of a state church or a state religion, an area history shows they regarded as very important and fraught with great dangers. Instead they commanded that there should be "no law *respecting* an establishment of religion." A law may be one "respecting" the forbidden objective while falling short of its total realization. A law "respecting" the proscribed result, that is, the establishment of religion, is not always easily identifiable as one violative of the Clause. A given law might not *establish* a state religion but nevertheless be one "respecting" that end in the sense of being a step that could lead to such establishment and hence offend the First Amendment.⁴⁹

The Court identified three specific evils that the establishment clause is intended to prevent: "Sponsorship, financial support, and active involvement of the sovereign in religious activity."⁵⁰

The *Ideal Life* holding conflicts with *Lemon* insofar as it construes the

exhaustive. See generally H. SMITH, *THE RELIGIONS OF MAN* (1958); J. WALZ, *THE COMPARATIVE STUDY OF RELIGIONS* (1961).

45. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ." U.S. CONST. amend. I. The first amendment establishment clause requires government to refrain from excessive entanglement in the advancement of religion. See *Lemon v. Kurtzman*, 403 U.S. 602 (1971) (salary supplement to parochial teachers); *Walz v. Tax Comm'n*, 397 U.S. 664 (1969) (constitutional challenge of property tax exemption); *Engle v. Vitale*, 370 U.S. 421 (1962) (prayer in public schools); *Everson v. Board of Educ.*, 330 U.S. 1 (1947) (Catholic school bus fare reimbursement).

46. 403 U.S. 602 (1971).

47. The funds used in both statutes apparently originated from the general tax revenues of each state. *Id.* at 607-10. Rhode Island provided a salary supplement for teachers of secular subjects in non-public elementary schools. *Id.* at 607. Pennsylvania's program was similar but it also provided funds for textbooks and instructional materials. *Id.* at 609.

48. *Id.* at 606.

49. *Id.* at 612.

50. *Id.*, citing *Walz v. Tax Comm'n*, 397 U.S. 664, 668 (1970).

Minnesota church property tax exemption in a way that financially supports orthodox, mainstream, theistic religions. A church satisfying the requirements of the *Ideal Life's* multifactorial analysis enjoys the benefits of a property tax exemption, whereas a "church" not fulfilling a sufficient number of the last seven factors does not. As construed by the *Ideal Life* court, the Minnesota church property tax exemption aids and, therefore, "respects" theistic as opposed to non-theistic religions. While such aid obviously falls short of establishing a state church or religion, it does constitute discriminatory sponsorship and financial support of religious activity contrary to the principles of *Lemon*.

In addition to the establishment clause difficulties, the *Ideal Life* multifactorial analysis introduces free exercise problems. The free exercise clause limits government regulation or interference with religious practices.⁵¹ By withholding the benefit of a property tax exemption from a religious organization, the government necessarily inhibits free exercise of religious beliefs. While the *Ideal Life* facts presented no free exercise issues, the Minnesota Supreme Court should have future occasion to deal with this problem.

Cases interpreting both the establishment and free exercise clauses imply that the proper method of resolving the delicate question of what is a religious belief is through a sincerity of belief test.⁵² In the landmark case of *Wisconsin v. Yoder*⁵³ the United States Supreme Court focused on the presence of a "deep religious conviction."⁵⁴ Justice Wahl's scrutiny of the substance of an organization's operation for tax purposes parallels the *Yoder* standard. A depth-of-conviction or sincerity-of-belief test obviates the need for judicial classification of "religious" dogma and ritual.

A more constitutionally acceptable standard is that proposed by Judge Adams in the Third Circuit case of *Malnak v. Maharishi Mahesh Yogi*.⁵⁵ In

51. The free exercise clause limits government restrictions on religious practice. See *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (withdrawal of Amish children from public school); *Gillette v. United States*, 401 U.S. 437 (1971) (conscientious objection to "unjust" war); *United States v. Seeger*, 380 U.S. 163 (1965) (conscientious objector exemption); *Braunfeld v. Brown*, 366 U.S. 599 (1961) (Sunday closing statute affecting Orthodox Jew's business); *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (mandatory flag salute in classroom); *Reynolds v. United States*, 98 U.S. 145 (1879) (regulation of Mormon practice of polygamy).

Ultimately, the Court seeks a neutral balance between the free exercise and establishment clauses. See *Sherbert v. Verner*, 374 U.S. 398, 422 (1963) (Harlan, J., dissenting); *Zorach v. Clauson*, 343 U.S. 306, 312-13 (1952). See generally Zollman, *supra* note 2.

Government neutrality and the voluntary choice of the individual in religious matters are the two basic values the religious clauses were historically intended to protect. See L. TRIBE, *AMERICAN CONSTITUTIONAL LAW* 818-19 (1978); Giannella, *supra* note 5, at 516-26.

52. See *supra* notes 46-51 and accompanying text.

53. 406 U.S. 205 (1972).

54. *Id.* at 216.

55. 592 F.2d 197, 207-13 (3d Cir. 1979) (Adams, J., concurring).

a concurring opinion Judge Adams looked to three factors: the ultimate concern to which the beliefs of the religion were directed,⁵⁶ the comprehensiveness of the beliefs,⁵⁷ and the institutional nature of the beliefs.⁵⁸ The ultimate concern criterion is the most crucial and is derived from the United States Supreme Court cases of *United States v. Seeger*⁵⁹ and *Welsh v. United States*,⁶⁰ in which the Court, considering the beliefs of conscientious objectors to military service, held that deeply and sincerely held beliefs comparable in subjective importance to the beliefs of members of orthodox religions constitute 'religious' beliefs for purposes of conscientious objector status.⁶¹

The second criterion, comprehensiveness, looks to the breadth of a system of beliefs concerning issues of ultimate concern.⁶² The comprehen-

56. *Id.* at 208. The "ultimate concern" question examines the general nature of the belief and is derived from the writings of Dr. Paul Tillich, who was cited by the *Seeger* Court and by Judge Adams. See P. TILlich, *DYNAMICS OF FAITH* 1-2 (1958). "Ultimate concern" refers to the basic axioms or principles an individual holds as crucial to his existence. See *United States v. Seeger*, 380 U.S. 163, 180-83 (1965). Judge Adams listed "the meaning of life and death, man's role in the Universe, [and] the proper moral code of right and wrong" as examples. 592 F.d at 208.

57. "A religion is not generally confined to one question or one moral teaching; it has a broader scope. It lays claim to an ultimate and comprehensive 'truth.'" 592 F.2d at 209.

58. Judge Adams described this indicia as

any formal, external, or surface signs that may be analogized to accepted religions. Such signs might include formal services, ceremonial functions, the existence of clergy, structure and organization, efforts at propagation, observation of holidays and other similar manifestations associated with traditional religions.

592 F.2d at 209.

59. 380 U.S. 163 (1965).

60. 398 U.S. 333 (1970).

61. *Seeger*, 380 U.S. at 184-85; *Welsh*, 398 U.S. at 339-40.

62. See 592 F.2d at 209. Judge Adams rejected a dual constitutional definition of the word religion. Advocates of a dual definition of religion argue that there should be a broad definition for free exercise cases and a narrow definition for establishment clause cases. L. TRIBE, *supra* note 51, at 827-28; *Sheldon v. Fannin*, 221 F. Supp. 766, 775 (D. Ariz. 1963) (establishment clause definition looks to the minority's concept). See generally Freund, *Public Aid to Parochial Schools*, 82 HARV. L. REV. 1680, 1686-87 n.14 (1969); Galanter, *Religious Freedoms in the United States: A Turning Point?*, 1966 WIS. L. REV. 217, 266-67; Note, *Toward a Constitutional Definition of Religion*, 91 HARV. L. REV. 1056, 1084-85 (1978).

The unitary definition of religion refers to the consistent construction of the word religion for first amendment constitutional purposes. Dissenting in *Everson v. Board of Educ.*, 330 U.S. 1, 28-63 (1947), a case dealing with transportation aid granted to Catholic schools, Justice Rutledge described the unitary concept of religion:

The Amendment's purpose was not to strike merely at the official establishment of a single sect, creed or religion, outlawing only a formal relation such as had prevailed in England and some of the colonies. Necessarily it was to uproot all such relationships. But the object was broader than separating church and state in this narrow sense. It was to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion. . . .

"Religion" appears only once in the Amendment. But the word governs