BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

OVERRULED

THE YOUNG LIFE CAMPAIGN
(Petitioner)

PRECEDENT
TAX DECISION
No. P-T-337
Case No. T-73-94

Employer Account No.

DEPARTMENT OF BENEFIT PAYMENTS

Referee's Decision No. S-T-5843

The Department of Benefit Payments has appealed from the decision of a referee which granted the petition for review filed by Young Life Campaign (hereinafter referred to as "Young Life" or "petitioner").

STATEMENT OF FACTS

Young Life was formed in 1941 by a Presbyterian Youth Minister who was concerned that the organized church was not meeting the needs of those of high school age and therefore not reaching them. According to its Articles of Incorporation, the aim of Young Life is to encourage Christian young people to continue their spiritual life which will be manifested in Bible study, prayer, and consistent Christian living. Presently, the petitioner operates in 38 states and in 320 major cities in the United States. It also conducts operations in Korea, the Philippines, Brazil, France, Canada, and other foreign countries. It is estimated that each week approximately 22,000 young people attend its meetings.

Since its potential audience is reportedly suspicious of established churches and unimpressed by ritual, Young Life takes pains to deemphasize the ecclesiastical: The meetings are held in private homes which are called clubs; the "sermon" becomes a club talk; the person who conducts the meeting is called by his first name; a copy of the fundamental tenets is not distributed; and the meeting is not referred to as a worship service. In the hope of

fostering personal contact and relationships, the petitioner also runs camps at which sports and other activities are used to enable Young Life leaders to develop a more intimate rapport with those who attend in hope of deepening their religious life. The camps are primarily directed to developing man's relation to God, and traditional services are held there.

The petitioner is not a member of the Sacramento Church Service Bureau and does not itself ordain ministers. However, it is organized in a manner similar to the Presbyterian Church, and does provide religious training for its staff.

The headquarters of Young Life is located in Colorado Springs, Colorado. It has a Board of Directors and an executive director. The organization is separated into three divisions: North, South, and West. The divisions are then broken down into areas, which generally encompass a city. Within an area there are clubs. Each area has a local board made up of 10 to 12 laymen, formed initially at the invitation of a staff director. The local board must operate in accordance with the policies of the Board of Directors, which retains power to terminate local board members. When the local board becomes fully functional, it assumes responsibility for developing a local budget and raising funds. Should it raise funds in excess of its expenses, the petitioner's constitution permits the local board to allocate the excess, after conferring with the chairman of the Board of Directors' Finance Committee and within the policies of the Board of Directors.

Young Life utilizes volunteers and paid staff. Initially one is employed as a staff trainee. Eventually progression may be to an area, metropolitan, regional or divisional director. There is no requirement that the staff members be ordained or licensed ministers. Nevertheless, approximately one half of the staff personnel are ordained or licensed by some other denomination. To qualify for a staff position, one must have a college degree and either have graduated from a seminary and completed one semester of the Young Life Institute or completed eight semesters at the Institute. Furthermore, there is in-service training for staff, and every seven years a "field minister" is required to take a sabbatical to refresh his personal relationship to God and further his education.

Young Life Institute was established by the petitioner in 1954. During the summer it operates for two semesters of approximately three weeks each. Courses in the Old Testament, Church History, Christian Literature, Christian Ethics, Theology, and the New Testament are offered. The instructors are professors from Bible colleges or seminaries, especially the non-denominational Fuller and Luther seminaries. Graduates are awarded a Master of Arts in Youth Ministry.

The petitioner is primarily supported by donations from private individuals: 73% of funds raised for Young Life came from private individuals; 8% from established churches; and 19% from foundations and corporations. There are also fund raisers, like car washes. In Sacramento some 350 families donate to the petitioner.

A staff director testified as follows:

> "Q When a high school age youth comes to a club meeting do you ask him where he lives? Is there any qualification?
>
> "A No, in fact, we don't have any membership or any dues in Young Life at all..."
>
> (Transcript: April 24, 1973, morning session, p. 54, lines 19-22)

Accordingly, the meetings of Young Life are open to all, although young people are encouraged to attend meetings held in clubs which serve their high schools. The petitioner does not attempt to win converts from established churches but to evangelize for Christ. Its audiences are encouraged to join established churches. The petitioner regards itself as a supplement, rather than a substitute, for organized churches and acts in a spirit of cooperation, rather than competition.

Although there is no catechism as in the Church of Rome, extensive religious writings as in the Protestant Churches, or a collection of writings as in the Judaic Torah, Young Life has tenets which it requires all staff and board members to accept. Included are a belief in the divine inspiration and supreme authority of the Old and New Testaments, redemption through grace, and the divine nature of Jesus. The literature of Young Life that was introduced into

evidence does not mention the existence of sacraments. However, the Duties of a Young Life Minister, introduced by the petitioner, states:

> "Since his duties do not include administering the sacraments or officiating at weddings or funerals, no ordination is required."

Still, those staff members who are ordained or licensed do perform the sacraments of communion and baptism and celebrate marriages, at times at Young Life gatherings.

The senior pastor of Westminister Presbyterian Church, Sacramento, testified that in the Presbyterian Church there is a local congregation which elects members to the presbytery, which in turn elects members of a regional senate and General Assembly. Membership in the General Assembly is split between laity and clergy.

The National Council of Churches has insisted that to be regarded as a Christian Church, there must be a profession regarding the person of Jesus. There is no requirement that services be held in a particular building, as both early Christians and present day members of the Presbyterian Church have in the past and presently do hold religious services in private homes.

One of the most important dimensions of church work, in the pastor's view, is to offer its ministry to the world, regardless of the religious background of those receiving it. The pastor asserts that Young Life has proven its effectiveness in reaching the high school generation. He and his organization are hopeful that those who attend Young Life's meetings shall become members of some Christian congregation.

Young Life introduced evidence that a number of states have found it exempt from contributions under the state counterpart to Section 634.5 of the California Unemployment Insurance Code. On June 23, 1972 the Supervisor of the Employer Liability Unit, Division of Employment Security, Missouri Department of Labor and Industrial Relations, wrote that Young Life was exempt as a religious organization supported by churches. On December 27, 1972 the Chief of Employer Services, Employment Security Bureau, North Dakota; on May 22, 1972 the Assistant Chief of Contributions, Oklahoma Employment Security Commission;

and on August 3, 1972 the Job Insurance Contribution Chief, Division of Employment, Colorado Department of Labor and Employment, wrote without stating any reasons that Young Life was not subject to contributions. On September 21, 1972 the Tax Branch Chief, Washington Employment Security Bureau, ruled that Young Life was an exempt church. On the other hand, the petitioner has reimbursed New York for unemployment compensation paid to former Young Life staff members. The petitioner indicated that it intended to contest coverage in New York.

REASONS FOR DECISION

Prior to January 1, 1972, the petitioner was exempt under section 634 from the mandatory payment of contributions required by the Unemployment Insurance Code. That section excluded from the statutory definition of "employment", service performed in the employ of most nonprofit organizations that were organized and operated exclusively for religious, charitable, and other similar eleemosynary purposes.

Effective January 1, 1972, section 634 was repealed. In its place the legislature enacted code section 608 extending coverage to services in the employ of most organizations formerly exempted by code section 634. It also enacted code section 634.5 which continues to exempt service in the employ of certain non-profit organizations.

Petitioner's claim of continued exemption from the payment of contributions after January 1, 1972, is based upon either of two provisions of section 634.5. Primarily, petitioner contends that it is a "church" within the meaning of section 634.5(a)(1) which excludes from the definition of "employment", service that is performed in the employ of:

> "...a church or convention or association of churches...."

Alternatively, the petitioner contends that it is one of the other special types of religious organizations that come within the provisions of section 634.5(a)(2) which excludes from the code's definition of "employment", service that is performed in the employ of:

> "...an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches."

Here the petitioner is primarily supported by donations from individuals, is responsible for its own supervision, and is not subject to the control of a church or convention or association of churches. Clearly then, the petitioner may not qualify for an exemption as a religious organization within the meaning of section 634.5(a)(2). The issue before us is whether it qualifies as a "church" under subdivision (a)(1) of that section.

In view of the gravity of the issue we believe an extensive historical analysis is appropriate.

There are no provisions within the code itself which define the word "church" as used in section 634.5(a). Neither the Director of Employment Development nor the Director of Benefit Payments has adopted any regulation which sets forth any more explicit administrative interpretation of the intended meaning of this word. To discover the intention of the Legislature in regard to the meaning of the word "church", we must look to the circumstances that prompted it to add that section and section 608 to the code.

In reviewing the legislative history of the changes in our state law, we are required to keep in mind the fact, as expressed in section 101, that our California unemployment compensation program is:

> "...part of a national plan of unemployment reserves and social security, and is enacted for the purpose of assisting in the stabilization of employment conditions."

The overall operation of this national plan is coordinated through certain federal legislation which provides for a federal tax upon the payment of wages by employers throughout the whole nation. It also provides for a substantial credit against this federal tax based upon the state taxes which employers may be required to pay under a state unemployment compensation law. However, this federal credit is available only to employers of a state whose unemployment compensation law has been approved and certified by the

United States Secretary of Labor as meeting the requirements established by Congress for this national plan (see Steward Machine Co. v. Davis (1937) 301 US 548, 585-598).

The substantial federal credit makes it possible for California to finance its unemployment compensation program without placing the employers of this state at an economic disadvantage in competing in the national market. How important this credit is, is clearly reflected in that portion of code section 101 which in part also provides:

> "...when existing federal legislation which provides for a tax upon the payment of wages by employers in this State, against which all or any part of the employer contributions required under this part may be credited is repealed, amended, interpreted, affected or otherwise changed in such manner that no portion of such contributions may be thus credited, then upon the date of such change, the provisions of this part requiring employer contributions and providing for payment of unemployment compensation benefits shall cease to be operative...."

In conclusion, since the inception of the program there has been a general intent upon the part of our Legislature to conform the California program to the national plan and to maintain that conformity by making necessary changes in State law. Our program should be interpreted in a manner that is consistent with our State's participation in the national plan and harmonizes with federal legislation.

This brings us to the specific circumstance that motivated our legislature to add sections 608 and 634.5 to the code. That action was prompted by a specific change relating to exemption of certain services from employment as specified in the Federal Unemployment Tax Act (FUTA) which Congress made operative as of January 1, 1972. California could not continue to remain a part of the national plan unless it chose to make the corresponding change in its own unemployment compensation law. Code sections 608 and 634.5 reflect the deliberate choice of our legislature to make that corresponding change.

Prior to 1970 FUTA section 3306(c)(8) provided for the exception from the FUTA definition of "employment", of

> "service performed in the employ of a religious, charitable, educational, or other organization described in [Internal Revenue Code] section 501(c)(3) which is exempt from income tax under [Internal Revenue Code] section 501(a);"

Because of this tax exemption, there had been no federal incentive for states to cover such service under their state unemployment compensation laws. However, in 1970 Congress changed the national plan to provide that incentive. It did not change FUTA section 3306(c)(8), the effect of which would have been to deny these organizations continued federal exemption. Rather it added a new FUTA section 3309(a)(1)(A) which requires that a state desiring approval of its unemployment insurance program must cover all service for nonprofit organizations that is exempted under FUTA section 3306(c)(8), except for service, inter alia, performed in the employ of:

> "...a church or convention or association of churches...."

This of course is the exact language of Unemployment Insurance Code section 634.5(a)(1).

It is apparent, therefore, that code sections 608 and 634.5 were enacted to conform the California state unemployment compensation program to the changes which Congress had made in the national plan, and that our legislature intended the provisions of these two new code sections to mean just what Congress intended the corresponding FUTA sections to mean. Accordingly, to determine the meaning of the word "church" as used in section 634.5, we must examine the federal legislative record to discover, if possible, the meaning that Congress attributed to "church" as it used the term in FUTA section 3309(b)(1).

As in the case of the California statute, there are no provisions within the FUTA itself which define "church." Also, like their state counterparts, neither the Secretary of Labor nor the Secretary of the Treasury has adopted any regulations setting forth a more explicit administrative definition of the word. Nevertheless, we may derive some guidance in regard to the origin and meaning of the phrase "church or convention or association of churches" from the

Congressional reports which accompanied Public Law 91-373 on its voyage through Congress; from Congressional reports accompanying proposed legislation of a similar nature in 1966; and from the Congressional reports that examined the meaning of the Unrelated Business Income Tax Act adopted in 1950. It was in this latter act that Congress developed the phrase "church or convention or association of churches."

There were three Congressional reports that accompanied H.R. 14705 (later Public Law 91-373) in the 91st Congress. The first of these is House Report No. 91-612 issued by the House of Representatives Committee on Ways and Means on November 10, 1969. On pages 11 and 12 this Report described the (then) present law and the proposed changes in general terms. On page 12, the Report points out that:

> "States would not be required to cover services for all nonprofit organizations. They could continue to exclude...the following:
>
> 1. Service for a church, a convention, or association of churches, or for an organization operated primarily for religious purposes and supported by a church or churches."

The Report also states on page 12 that:

> "States would be free to go beyond the Federal coverage provisions and bring under the State law any additional groups which the State legislature considers appropriate."

In a more detailed discussion of the proposed changes on pages 43 and 44 of this report, the committee described the proposed new FUTA coverage requirements for state law approval and certification. With respect to the permitted exclusions under the proposed section 3309(b)(1) the committee states that:

> "This paragraph excludes services of persons where the employer is a church or convention or association of churches, but does not exclude certain services performed for an organization which may be religious in orientation unless it

> is operated primarily for religious purposes and is operated, supervised, controlled or principally supported by a church (or convention or association of churches). Thus, the services of the janitor of a church would be excluded, but services of a janitor for a separately incorporated college, although it may be church related, would be covered. A college devoted primarily to preparing students for the ministry would be exempt, as would a novitiate or a house of study training candidates to become members of religious orders. On the other hand, a church related (separately incorporated) charitable organization (such as, for example, an orphanage or a home for the aged) would not be considered under this paragraph to be operated primarily for religious purposes."

The second of these reports is Senate Report No. 91-752 issued by the Senate Committee on Finance on March 26, 1970. On pages 3 and 4 of this Report the committee describes the proposed changes in coverage stating that approximately 3.2 million additional jobs would be covered after January 1, 1972 by the service described in the proposed section 3309. The detailed description of the proposed changes at pages 47 through 49 of this report is essentially the same as that found in House Report No. 91-612, quoted above.

The third of these reports is House Report No. 91-1037 issued on May 5, 1970. It is the report of the Conference Committee. It contains nothing relative to the foregoing.

In 1966 Congress considered but did not enact H.R. 15119. Its provisions were essentially the same in regard to the foregoing as those eventually enacted by Congress in 1970. Senate Report No. 1425 issued on August 2, 1966 describes these provisions at pages 10 and 11, and at pages 42 through 44, in essentially the same way.

The phrase "church or convention or association of churches" was first used by Congress in the Unrelated Business Income Tax Law which it enacted in 1950. Again there were three congressional committee reports that accompanied the bill (H.R. 8920) which became this law. Of these, of particular interest to us is Senate Report No. 2375 (81st Congress, 2d Session) issued by the Senate Committee on Finance on August 22, 1950.

On pages 27 and 28 of this report the Committee stated that:

> "The House bill imposes the regular corporate income tax on certain tax-exempt organizations which are in the nature of corporations, and the individual income tax on tax-exempt trust, with respect to so much of their income as arises from active business enterprises which are unrelated to the exempt purposes of the organizations.... The tax does not apply to income of this type received by a church even though the church is held in the name of a bishop or other church official. However, the tax does apply to other exempt institutions under the auspices of the churches.
>
> "The tax on unrelated business income under your committee's bill is imposed in the same manner and applies to the same organizations as under the House bill except that it is made clear that associations or conventions of churches also are excluded from the tax. It was pointed out to your committee that in the case of some denominations each local church is autonomous and that as a result the central association or convention might not be exempted from tax in these cases under the House bill."

The Congressional Reports do demonstrate that Congress did distinguish between churches and other religiously motivated organizations and that its purpose was to extend coverage to a significant number of persons for the protection of unemployment compensation. Unfortunately, the Reports do not explain what Congress meant by the term "church."

DeLaSalle Institute v. United States (1961), 195 Fed Supp 891, is the only reported decision interpreting the meaning of the phrase used in both the Unrelated Business Income Tax and in FUTA. There the court concluded that the income from the winery of the Christian Brothers, a Catholic religious order, was not exempt from taxation as income of a "church or convention or association of churches" despite the fact that under Roman Catholic Canon Law, the income from the winery was considered the income of the Roman Catholic Church itself.

At page 899, the federal court noted that the Senate Finance Committee added the phrase "or convention or association of churches" in response to a request from a spokesman for the Southern Baptist Convention as being a convention of churches rather than a church. At page 901, the court stated:

> "Plaintiff obviously is not a convention or association of churches, nor is the Christian Brothers Order a convention or association of churches. Plaintiff is an integral organization, as is the Christian Brothers Order. The Roman Catholic Church is a 'church.' Consequently, if plaintiff's income would not have been exempt under the original wording of the statute, exempting 'churches,' it was not made exempt by the Senate Amendment, adding 'conventions or associations of churches.' In fact, I regard the Senate Amendment as merely clarifying language, and making no substantial change whatever."

The court pointed out the difference between a church and a religious organization in the following language:

> "The unrelated business net income tax is imposed solely upon the income of religious, charitable, and educational corporations, exclusive of churches, or conventions or associations of churches. Every church or convention or association of churches is obviously a religious organization. But is the converse true -- is every religious organization a church? Congress would in all probability not have drawn a new word into the statute unless it meant thereby to express a different idea (See United States v. Gertz, 9 Cir., 249 F.2d 662). There would be no sound reason to use the term 'church' in the statute, unless there was an intention to express a more limited idea than is conveyed by 'religious organization.'"
>
> * * *
>
> "The quoted language demonstrates the restricted meaning which the word 'church' was intended to have. It is obvious that an organization with an educational or even a religious purpose, formed under church auspices, was not necessarily a 'church' under the language of the bill."
>
> * * *

> "...To exempt churches, one must know what a church is. Congress must either define 'church' or leave the definition to the common meaning and usage of the word; otherwise, Congress would be unable to exempt churches. It would be impractical to accord an exemption to every corporation which asserted itself to be a church. Obviously, Congress did not intend to do this...."

The court did not provide a comprehensive definition of the term "church"; it stated at page 903 as follows:

> "...What is a 'church' for purposes of the statute must be interpreted in the light of the common understanding of the word. An organization established to carry out 'church' functions, under the general understanding of the term, is a 'church'...."

The petitioner has cited numerous cases. In none of them was the court faced with the question whether an organization was a church. For instance in Calvary Presbyterian Church v. State Liquor Authority (1935), 245 N.Y. App. Div. 176 the court decided that a building utilized by Presbyterian and Spiritualists congregations was a church. Baker v. Fales (1820), 16 Mass 488; First Independent Mission Baptist Church of Chosen (Dist. Ct. of Appeal of Florida) 153 S 2d 337; Rosicrucian Fellowship v. Rosicrucian Fellowship Non-Sectarian Church (1952) 39 Cal 2d 121; and Pehu v. Kauai (1867) 3 Hawaii 50, all involved disputes among members of a formerly unified church. In Morey v. Riddell (1962) 205 FS 918 the court was required to consider if an association without a name, charter, bylaws, officials, or headquarters was organized for religious purposes. In Fellowship of Humanity v. Co. of Alameda (1957) 153 Cal 2d 673, the court was not called upon to decide whether a "humanist" organization was a church, but whether it conducted religious worship. Finally, neither Salvation Army case can be cited for the proposition that a missionary organization in and of itself is a church. Bennett v. City of La Grange (1922) 153 Ga. 428 held that a municipal corporation may not expend public funds on the Salvation Army because of a state constitutional provision prohibiting grants to "any church, sect, or denomination of religionists..."; McClure v. Salvation Army (1971) 323 FS 1100 decided the organization was a "religious corporation, association, or society."

Historically and in modern times, a "church" has been defined in two ways: First, a temple or building consecrated to the honor of God and religion; or second, an assembly of persons united by the profession of the same Christian faith, met together for religious worship (Robertson v. Bullions (1850), New York Supreme Court, Fourth Judicial District, 9 Barbour (N.Y.) 64 at 95; Jacobs Law Dictionary (1811) "Church"; Tomlins Law Dictionary (1836) "Church"; Town of Pawlet v. Clark (1815) U.S. Supreme Court, 9 Cranch (13 U.S.) 292 at page 326). Although historically the derivation of the word "church" for the most part came through the Christian religion, we do not restrict the meaning of the word to any particular faith or denomination (Walz v. Tax Commission of City of New York (1970) 397 U.S. 664).

This board has previously expressed the view that a church does not necessarily imply that a house of worship or a sanctuary is essential to the body of worshippers who may constitute a church. A group of believers who worship together periodically in accordance with a common set of tenets or articles of faith may comprise a church. (See Tax Decisions Nos. T-74-11 and T-74-12).

In light of the considerations set forth above, we are left to resolve the crucial question whether the petitioner is a church as contemplated by section 634.5. In making this determination we must keep in mind that a primary factor in the enactment of section 608 was the extension of coverage. Therefore the exemption must be limited to those organizations that clearly fall within the traditional meaning of the term "church." Thus, the organization must establish that it is an assembly of persons united by the profession of the same faith who meet together for religious worship.

Although there is no question that Young Life is a religious organization and performs a religious task in bringing the Word to high school age youth, we do not believe that it is the traditional assembly.

While probably all churches evangelize, the mission of churches extends beyond simple evangelism to a limited group. Young Life, forebearing the entire body of potential believers, deals only with a certain age group. Moreover, even with this age group, it does not attempt to induce the youth to remain members of Young Life, but on the contrary encourages them to leave and to become members of a traditional church.

We are impressed that the petitioner itself does not claim to be a church when dealing with youth. According to its literature it is not a church, and, if it is a church, it does its best to disguise the fact in its meetings. We know of no church that deliberately proclaims that it is not a church.

Underscoring the fact that Young Life does not carry on "church" functions is the fact that it does not ordain clergy or itself authorize the ministration of sacraments. The ordained clergy are ministers of churches which take part in the missionary activities of Young Life. They proclaim the gospel in accordance with the teachings of their church and act under authority extended to them by their church. Young Life merely provides a place where members of established churches can follow their calling. It does not thereby become a church itself.

In conclusion, to enlarge the term "church" to encompass a purely missionary organization would stretch the term to include almost all religious organizations and would not be consistent with the intent of Congress.

DECISION

The decision of the referee is reversed. The petition for review is denied.

Sacramento, California, March 31, 1977.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

RICHARD H. MARRIOTT

(NOT PARTICIPATING:

HARRY K. GRAFE)