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IN GOD'S NAME

As Religious Programs Expand, Disputes Rise Over Tax Breaks

By [DIANA B. HENRIQUES](#)

The similarities between Holy Cross Village at Notre Dame, on the north side of South Bend, Ind., and Hermitage Estates, south of town, are almost disorienting. The two retirement communities have the same simple gabled ranch houses, with the same touches of brick and stone, clustered around a pond with the same fountain funneling spray into the air and ducks waddling down the grassy bank.

But the retired residents of Hermitage Estates pay an average of about \$2,300 per unit in property taxes. The management of Holy Cross Village, the Brothers of Holy Cross, says that development should be exempt from property taxes, and it has taken that argument to court.

As the Brothers of Holy Cross, a Roman Catholic religious order, sees it, providing the elderly with the amenities of the village — a sense of security, social opportunities and various services to make independent living easier — is a charitable activity rooted in its pastoral mission to serve others.

Members of the St. Joseph County Property Tax Assessment Board of Appeals, all but one of them lifelong Catholics, see it differently. To them, a charitable ministry does not consist of providing lovely retirement living to affluent people. The current residents of Holy Cross Village have an average net worth of \$1 million. Those with deposits on the units under construction are even better off, averaging \$1.6 million.

If Holy Cross Village is not taxed, members of the assessment board point out, a heavier burden will fall on the working families in the county that are struggling to pay the taxes on their small homes in careworn communities like the west side of South Bend.

“I was educated by the Brothers of Holy Cross” at St. Joseph’s High School, “and I have a great deal of respect, love and affection for them,” said Dennis J. Dillman, a longtime board member. “But I think what they’re doing is just not right. And that is based on the values they taught me at their schools.”

The conflict in South Bend echoes disputes from Alaska to Florida that raise the following issue: As religious organizations of all faiths stretch their concept of mission far beyond traditional worship,

should their traditional tax exemptions expand as well? Increasingly, government at all levels is answering yes.

The property tax exemption is one of the oldest tax breaks granted to religious organizations, but it is not the only one. Lawmakers and judges have also approved what amounts to special tax treatment for religious organizations and some of their employees, including exemptions on personal-income and payroll taxes, and have made it easier for them to get tax-exempt construction loans for purely religious projects.

Like the exemptions from federal and state regulations that have proliferated for religious groups in recent years, these tax breaks are widely defended both as an acknowledgment of religion's contributions to society and as a barrier to unjustified government limitations on the liberty that religious organizations enjoy under the First Amendment.

But in some communities like South Bend, tolerance of religious tax breaks is fraying as local governments struggle to provide basic services with limited resources.

There are no national figures on how much money these tax breaks save religious organizations and on how much extra cost is shifted to other citizens. But a typical state, Colorado, reported that religious real estate valued at more than \$1.1 billion was exempt from local property taxes there last year. Nationally, tax-exempt financing for religious organizations totaled at least \$20 billion during the decade that ended last year.

Congressional budget records show that just the income tax breaks uniquely available for ministers, rabbis and other clergy members cost taxpayers just under \$500 million a year.

And the price is almost certainly increasing, experts on taxation and congregational growth agreed, because today's larger congregations need more land, employ more clergy members and pay them more money. Moreover, the definition of a religious mission is expanding beyond schools and hospitals to include operations as obscure as a biblical theme park in Florida and as upscale as a retirement community at Notre Dame.

Every state affords some type of property-tax exemption to churches, synagogues, mosques and other religious landowners, typically through statutes that also cover charities, libraries, museums, private schools and other secular nonprofit groups. Indeed, when the Supreme Court [ruled on the constitutionality of this tax break](#) in 1970 it noted approvingly that the benefits did not fall exclusively on churches.

But those venerable tax statutes did not envision the reality of modern congregations that operate

athletic programs in their own gymnasiums or fitness centers, as well as bookstores, music and video production units, coffee shops, counseling services, ice cream parlors, child care programs and multimedia ministries that beam their messages from satellite dishes or television transmission towers.

Leonard A. Wychocki, president and chief executive of the Franciscan Sisters of Chicago Service Corporation, a Catholic organization hired to manage Holy Cross Village, says religious groups should not have to defend property tax exemptions. "When there were old people on the streets of New York City and Chicago, our sisters took them in," he said. The exemption recognizes "the service such groups provide to society."

No residents of Holy Cross Village will be coming in off the streets, of course. "People pay a lot of money to live in these places," Mr. Wychocki acknowledged. "But they have a need beyond just a place to live. It's around that need that we catalyze our services."

Financial projections show that the project, if managed well, could eventually generate a surplus. That money, the project's executives said, could help support other mission work of the Brothers of Holy Cross, including a ministry in Africa.

"If the county wants to argue that those dollars should go to west South Bend rather than West Africa, I can see their point," Mr. Wychocki said. "You may agree or disagree — but then it's your judgment, as opposed to the brothers' judgment."

He added, after an emphatic pause: "This is probably where religious freedom kicks in."

Breaks on Property Taxes

Neat homes in landscaped clusters make up the first phase of what will be 256 units at Holy Cross Village at Notre Dame. Among the new units will be additional assisted-living and skilled-nursing units to expand the existing "continuum of care," its management said. Three adjacent colleges, the [University of Notre Dame](#) among them, expand the cultural opportunities.

In style and luxury, the project compares favorably with competing retirement communities built by national developers nationwide. But there is a difference: Holy Cross Village describes itself as "a ministry of Brothers of Holy Cross." As such, it is seeking a property tax exemption from the Property Tax Assessment Board of Appeals for St. Joseph County.

That rankles Ralph J. Wolfe, an assessment board member who is a resident of Hermitage Estates, a 49-unit neighborhood of retirees whose homeowners association provides services including

maintenance and lawn care.

Mr. Wolfe, 77, is a retired tax assessor and a longtime veteran of the close-knit appeals board. He said his community, like Holy Cross Village, offers its retirees some amenities. "So maybe we should get ourselves a property tax exemption."

He seemed to be teasing Terrance F. Wozniak, the deputy county attorney for St. Joseph County, who was listening. One of Mr. Wozniak's biggest worries about losing the pending battle with Holy Cross is the ripple effects on the retirement communities in the county that do pay taxes.

The Indiana courts recognize a broad definition of charity, and exemptions already have been granted to a few much smaller religious-affiliated projects that care primarily for less healthy people, Mr. Wozniak said. But this case is different, he said: "It's a case of escalation." An exemption for the charitable care of needy older citizens is being stretched to cover "more and more luxurious facilities for people who, by and large, can pay their fair share."

Each case lowers the hurdle for what constitutes a tax-exempt retirement community, he said.

The [management of Holy Cross Village](#) thinks the project's mission fits well within both the Indiana definition of a "charitable purpose" and the federal standards for tax-exempt housing providers. The federal test requires, in part, that the project "be committed by established policy" to maintaining people as residents even if they become unable to pay, as the project's investment documents explain.

There is nothing in writing that guarantees the project will keep indigent residents in place, said Lori McLaughlin, general counsel for the Franciscan Sisters management group. "It becomes a case of those guarantees bankrupting you," she said.

But in lieu of a guarantee, the management has "nuns or brothers on the board saying, 'We insist you provide care,'" Mr. Wychocki said. "It would be very rare for anybody to be asked to leave."

Holy Cross Village initially paid the taxes the county demanded, but subsequently got court permission to hold off on future payments while its appeals go forward, according to Kevin Rose, a spokesman for the project's management.

When the Brothers of Holy Cross [appealed the county's ruling to the Indiana Board of Tax Review](#) last year, it lost. "A charitable purpose involves something beyond merely successfully marketing one's services to seniors," the review board said. "It implies some level of sacrifice on the part of the entity providing those services. It is this sacrifice that separates an 'obviously charitable act' from the everyday purposes and activities of man in general."

The fight has now moved to the courts, where the project's management hopes to fare better. "We thought we were within the orbit of what was considered to merit that exemption," Mr. Wychocki said. "Now we just stand and shake our heads."

While local tax authorities have been inconsistent in their rulings, many untraditional uses of land by disparate religious organizations of many faiths have already qualified for property tax exemptions somewhere in the country.

In June, for example, the Florida Legislature passed, and Gov. [Jeb Bush](#) signed, [a law that ended a five-year effort](#) by Orange County tax authorities in Orlando to collect about \$300,000 a year in property taxes from [Holy Land Experience](#), a biblical museum and theme park that had sought exemption as a religious ministry but had been repeatedly turned down by the county.

The park, where a pass good for a week costs \$35 for adults and \$23 for school-age children, advertises itself as a place that "brings the world of the Bible alive." Its features include replicas of Calvary, the tomb of Jesus and the caves where the Dead Sea Scrolls were found. It also includes a period recreation of a Jerusalem street market, with actors in costume as the merchants and buyers; and the KidVenture area, with a wilderness rock-climbing wall, a "misting station" and toy and gift shops. A cafe and two snack bars serve "real Middle Eastern fare" from couscous and falafel to Goliath Burgers.

The county property appraiser's office had insisted that the park, despite its biblical motif, was taxable, just like [Disney](#) World. The park's founder, the Rev. Marvin J. Rosenthal, argued that it was a religious mission from start to finish, aiming to introduce religion to people in an entertaining and enlightening way.

In July 2005, a local judge ruled against the county, saying the biblical park's intent was to "spread what it considers to be God's word," while the intent of Disney World "is indisputably to make money." When the county decided to appeal that decision, the ministry that operates the park lobbied successfully for relief in Tallahassee.

A spokeswoman for Governor Bush said he signed the bill "merely to prevent future legal action and provide clarification of the law" on exemptions for religious property.

In 2003, [the Minnesota Tax Court granted an exemption](#) to an elaborate fitness center owned by [the Country Bible Church](#) in Ashby, explaining that the center — which included a weight room, tanning bed, video arcade and bookstore, as well as a small auditorium and prayer room — was used to attract new church members.

The church, with about 250 members, has a broad range of programs for children and teenagers,

including a day school and toddler program. But it decided in 1996 that its rural location simply did not offer enough for young people, and it conceived the Destiny Center as a place where young people could form healthy habits and “strong, godly friendships,” according to its pastor.

“We’ve spent close to \$1 million, including the building and staff, and we’ve never broken even,” said the Rev. Steven R. Quernemoen, who founded the church 25 years ago. “But the goal is not to run a for-profit business. The goal was to open a facility that is a safe environment for young kids and families.”

The two-story center, with a center gable soaring high over the entrance, opened in October 2000 a few miles from the church. Besides its fitness facilities, it has a gymnasium that offers room for rock concerts and for family events like wedding receptions, reunions or birthday parties. A day pass costs \$4.69, including shower privileges. An annual family membership costs \$500, but the elderly pay about half that. It is open most mornings and after school through the week, but is closed all day on Sunday.

Similarly, in 2002, the Washington State courts granted a tax exemption for the site of a religious broadcaster’s transmission tower. And in January the Pennsylvania Supreme Court reversed a 1959 decision that had denied tax exemptions to parking lots that serve houses of worship.

Legislative Success

Some religious organizations have had equal success with state legislators.

The Anchorage Baptist Temple, which has grown to 4,500 members during the 35-year tenure of the Rev. Dr. Jerry Prevo, is a big, muscular church on a 20-acre campus in eastern Anchorage. Its complex includes a 2,100-seat auditorium, several gymnasiums, a television station and the Anchorage Christian Schools, which serve about 750 students from preschool to 12th grade. The church also owns an assortment of individual properties, 10 of them tax-exempt.

In April 2004, city tax assessors revoked the exemption for four church-owned homes they said did not qualify as “parsonages” because they housed church day-school teachers, not the pastors or other “spiritual leaders” specified by law.

“We are a high-profile church,” said Pastor Prevo. “We were being picked on to make a public statement against tax exemptions generally.”

Any group as large as Anchorage Baptist Temple would probably have no trouble getting help from state lawmakers, even if its pastor did not have his own television show and even if one of the 16 men

on its pastoral staff were not treasurer of the state [Republican Party](#). Last May, after vigorous lobbying by the congregation, the Republican-controlled Alaska Legislature passed and Gov. [Frank H. Murkowski](#) signed a bill that extends the parsonage exemption to church-owned residential property occupied by educators at private religious or parochial schools.

The exemption, which does not cover faculty housing at secular schools, has been challenged in court by the local [American Civil Liberties Union](#).

It is a tough fight, a lawyer for several big churches said, because a legislature that can constitutionally exempt a parsonage from the tax rolls can surely extend that exemption to homes a church provides to its schoolteachers.

And back in St. Joseph County, Ind., the Granger Community Church, a large United Methodist group, took exception to the county's enforcement in 2001 of a long-overlooked law that limited the amount of tax-exempt acreage around a church to 15 acres — which left the church with 14.54 acres still on the tax rolls.

It lost in the courts but carried its fight to Indianapolis, and helped push through changes that eliminated the 15-acre cap.

Breaks on Borrowing

The Rev. Russell Lievers of the First Southern Baptist Church in Clarksville, Ind., a town of 22,000 across the Ohio River from Louisville, Ky., is understandably excited about the new fellowship hall his church is building.

At a price of roughly \$2.5 million, the facility will contain a “middle-school-sized” gymnasium, he said, as well as a kitchen, meeting areas and classroom space. It will ease crowding at the 57-year-old church and open possibilities for new athletic ministries and outreach, he added.

Pastor Lievers is not familiar with the details for financing the new facility — but he knows the church has received a good interest rate on some of the money it is borrowing. That's important, he said, because “our people are giving sacrificially” to support the new facility.

“There are people who are delaying their retirement for a few years to help us build this,” he continued. “Others are postponing purchases so they can give more.”

The explanation for the church's low-cost financing is simple. It is relying on \$1 million in tax-exempt revenue bonds sold on its behalf by the town of Clarksville, through its economic development commission.

“It is the first time we’ve had a church apply,” said Samuel K. Gwin, the town attorney. “But most of us here on the town council and economic development commission were familiar with the church, and the folks in the church. It’s a small town.”

The church bond issue is structured like any economic development deal: the town sells tax-exempt bonds to an investor — in this case, a local bank — willing to accept a lower yield because the interest is tax-free. The town lends the lower-cost money to the church. The bank gets tax-free interest income, the church gets a lower-cost loan and the town gets — well, at the least, a new gymnasium the community can use when the church’s calendar permits.

“That will be good,” Mr. Gwin said. “Even the Y is pretty crowded.”

In the evolving view of the courts, tax-exempt bonds for churches and other religious organizations do not involve any public money or government subsidy and do not run afoul of the First Amendment ban on government-sponsored religion.

But in fact, the subsidy provided by all tax-exempt bonds, while indirect, is real: buyers of the bonds do not have to pay income taxes on the interest they earn, which shifts some of the overall tax burden to other taxpayers. And the final beneficiary of the bond issue — in this case, the church — can hold on to money it would otherwise have paid in interest.

Of all the tools that an accommodating government can use to make life easier for religious organizations, perhaps none has changed more and been noticed less than tax-exempt bond financing.

State and local governments have long used tax-exempt bonds to finance public works like bridges and schools, pledging future tax income to repay the debt. In the 1970’s, they began to rely heavily on revenue bonds, debt backed not by taxes but by the future revenues of the projects they were sold to finance, which ranged from airports to stadiums. Through economic development agencies, revenue bonds also were sold for the benefit of private businesses to finance factories or office buildings that would foster economic development.

In 1973, near the high-water mark of the doctrine of strict church-state separation that dominated the postwar decades, the [United States Supreme Court](#) gave its limited blessing to public revenue bond deals to benefit private religious colleges — so long as they were not “pervasively sectarian” and regarded education, not the promulgation of religion, as their primary purpose.

In a landmark case called [Hunt v. McNair](#), the court reasoned that “aid normally may be thought to have a primary effect of advancing religion” — which would be unconstitutional — if it went to “an institution in which religion is so pervasive that a substantial portion of its functions are subsumed in

the religious mission, or when it funds a specifically religious activity in an otherwise substantially secular setting.”

As recently as 1991, [the Virginia Supreme Court refused](#) to approve tax-exempt financing for Liberty University in Lynchburg, Va., founded and run by the Rev. [Jerry Falwell](#), because of its overarching religious purposes.

Then, over the next eight years, judicial and government policy made a U-turn.

Gradually, state bond statutes became less restrictive toward religious institutions and federal and state appeals courts started to permit tax-free financing at unabashedly religious universities — and later, religious high schools — so long as the money was used for firmly secular projects, like dormitories and dining halls. (California courts have held on to the “pervasively sectarian” standard, but three religious schools are currently challenging that approach before the State Supreme Court.)

Does Financing Count as Aid?

And the courts began to widely question whether tax-exempt financing even counted as government aid to religion at all, because the schools themselves had to repay the bonds and no public money was involved.

In June 2000, [Justice Clarence Thomas](#), writing for himself and three other justices, expressed second thoughts about denying tax-free financing to institutions based on how religious they were. “There was a period when this factor mattered, particularly if the pervasively sectarian school was a primary or secondary school,” he conceded. “But that period is one that the court should regret, and it is thankfully long past.”

A few months later, the [Virginia Supreme Court reversed the position it had taken](#) nine years earlier in the Liberty University case and approved tax-exempt bond financing for the construction of a campus for Regent University, a thoroughly sectarian institution founded by [Pat Robertson](#), the religious broadcaster who also founded the [Christian Coalition](#). The Virginia justices did balk at permitting Mr. Robertson to use public bond financing for his department of divinity; that would have to be financed in some other way, they said.

But that reluctance seems quaint these days. Early 2005 brought the sale of \$28.5 million worth of tax-exempt bonds issued by Cook County, Ill., to finance the construction of an academic center for the Catholic Theological Union, the largest Catholic graduate school of theology in the United States.

The new building, which a seminary spokeswoman said would open this fall, includes space for the

world-class Bechtold library of theology, spacious classrooms for religious study and “a worship area that has a sacred space for the entire community to gather,” according to the news release about its grand opening.

According to Jeffrey O. Lewis, a lawyer with Ice Miller in Chicago and the seminary’s bond counsel for that deal, “The ‘pervasively sectarian’ restriction began to fall apart in the late 1990’s, and quite a few firms are very comfortable doing seminary financing now.”

So it was perhaps inevitable that a local government would provide tax-exempt financing to an institution as indisputably sectarian and devoutly religious as the First Southern Baptist Church in Clarksville. “Nobody raised any questions about it at all,” recalled Mr. Gwin, the town attorney.

A search of the Municipal Securities Rulemaking Board’s database shows that more than \$20 billion in tax-exempt bonds have been sold since the late 1980’s on behalf of religious institutions or their affiliates, including deals benefiting a Jewish vocational workshop in Michigan, a Baptist retirement home in Arizona, a Presbyterian housing project in Missouri, Lutheran nursing homes and day care centers in Minnesota and Catholic schools in Rhode Island.

In one recent deal, the city of Olathe, Kan., agreed to sell more than \$83.5 million in tax-free bonds to help an affiliate of the Archdiocese of Kansas City finance Santa Marta, described as a Catholic “continuing care retirement community” with 162 units for independent living, 32 assisted-living units, a 32-bed nursing home and a swimming pool.

Except for the swimming pool, Santa Marta sounds a lot like Holy Cross Village at Notre Dame, whose property tax status is being disputed by the tax assessment appeals board in St. Joseph County. They certainly have this in common: Most of the money needed to build Holy Cross Village has been borrowed at favorable interest rates through the sale of a \$40 million tax-exempt bond — issued by the economic development commission of St. Joseph County.

Andrew Lehren and Donna Anderson contributed to this article.

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