



Pioneer Bank & Trust

Trust & Investments

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Taxes come first

George Thompson owed substantial back taxes and penalties to the IRS, over \$100,000. He proposed a program of monthly payments of \$3,000 to meet his obligation, but the IRS believed that he could pay much more. George's counsel filed Form 433-A showing monthly income of \$27,633 (\$331,596 annually) and monthly expenses of \$24,416. The difference was the amount that George offered to pay. The Service challenged two specific items of expense as not allowable in this computation.

Tithing

As a member of the Church of Jesus Christ of Latter-day Saints, George was required to tithe, paying \$2,110 to the Church each month. He felt that this payment was not discretionary, citing the Bible, and the Tax Court responded in kind in its opinion.

Petitioner introduced evidence, including a biblical passage from the Old Testament, to support his position. See Malachi 3:8-10. This brings to mind another biblical passage suggesting an answer to this type of dilemma: "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's." Matthew 22:21. However, even this formulation presents the dilemma of determining which things fall into the two respective categories.

George advanced three arguments that his tithing was not a conditional expense, and so it needed to be allowed by the IRS. First, George held a number of offices in the Church, and his tithing was a prerequisite to holding those offices. The IRS Manual does allow for considering tithing an allowable expense, but only when it is pursuant to paid employment, the Tax Court held, not volunteer offices.

Next, George protested that his spiritual health and welfare would be adversely affected if he could not tithe. The IRS Manual does include an allowance for health and welfare, but that does not extend to spiritual health. Indeed, "it would generally be inappropriate for the Commissioner or this Court to make determinations concerning what is or is not necessary for a particular person's religious or 'spiritual' health or welfare."

Finally, George claimed that interfering with his tithing violated his religious freedoms under the First Amendment. If he cannot tithe, he will lose the various offices he holds in the Church. That is the Church's decision to make, the Court held, not the government's. Indeed, the First Amendment forbids the government to participate in the decision as to what offices Church members may hold. But it does not forbid the government from insisting that taxes be paid before charitable contributions are made.

College expenses

George also had monthly college expenses of \$2,952. He believed that the IRS should have allowed this expense also as necessary.

The IRS Manual does address this situation. It provides that if the plan for paying off the tax debt will be completed within five years, the college expense will be allowable; otherwise it will not be. George's plan to pay just \$3,000 per month would not have paid off his back taxes and penalties within a five-year period, so the Tax Court rejected his plea.

The better course

On the one hand, it is good to know that the IRS will allow taxpayers to satisfy their debts over time. On the other hand, how could a taxpayer, even one with so large an income, fall so far behind on paying his taxes?

See your tax advisors to make sure that this situation doesn't happen to you.