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*RELIGIOUS OBJECTIONS TO USE OF SOCIAL
SECURITY NUMBERS ON TAX RETURNS*

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Religious Objections to Use of Social Security Numbers on Tax Returns

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Summary

Social security numbers have been required on tax returns since the early 1960s. There are a number of citizens who have religious objections to participation in social insurance systems, and Congress has chosen to accommodate certain groups' religious beliefs. Separately, there are other citizens who have religious objections to being identified by government-provided numbers, such as social security numbers, but to date Congress has not chosen to accommodate their beliefs. This paper briefly outlines the history of the requirements to use social security numbers on tax returns, discusses some of the statutory exemptions provided for certain groups which object to participation in social security, considers some case law and the effect of the Religious Freedom Restoration Act on the issue, and comments on existing practice in administering taxpayer identification numbers within the IRS. Although Congress could conceivably adopt a non-numerical system for taxpayer identification, we are unaware of any attempts to do so. In the absence of statutory authorization to avoid furnishing a social security number on a tax return, taxpayers can be penalized for failing to comply with the statutory requirements.

History of Using Social Security Numbers on Tax Returns

In October 1961, Congress authorized the Internal Revenue Service to require identifying numbers on tax returns.¹ Fifteen years later, the Tax Reform Act of 1976² codified IRS practice that the social security number was to be used as the identifying number for individuals; however, it was not until after the enactment of the Tax Reform Act of 1986³ that taxpayers claiming a dependency exemption were required to provide a social security number for all dependents age 5 and over. In 1990 the IRS reported that

¹P.L. 87-397, §1, enacted a new IRC § 6109.

²P.L. 94-455, §1211; IRC § 6109(d).

³P.L. 99-514, § 1524; then IRC § 6109(e).

7.5 million fewer dependents were claimed on tax returns in 1987 than in 1986.⁴ Since that time, the age has been lowered several times. Effective for tax year 1995, all dependents claimed on a tax return were required to have a taxpayer identification number.⁵ In 1996, supplying a dependent's taxpayer identification number was made part of the requirements for claiming the dependency exemption.⁶ The 1996 legislation explicitly authorized the IRS to deny the dependency exemption if no taxpayer identification was furnished. It was recognized that the change would have consequences for other deductions such as head of household filing status, the dependent care credit, and, more recently, the child credit.⁷

Exemptions from Participating in Social Security Based on Religion

There are a number of United States citizens who have religious objections to participation in the social security system. Some of them have been accommodated by the social security laws. For example, IRC § 1402(g)⁸ allows an exemption from the social security self-employment act to members of certain religious sects which are conscientiously opposed to private or public insurance and which make provision for care of their dependent members; and IRC § 1402(e) allows certain ministers, members of religious orders, and Christian Science practitioners who are opposed to the acceptance of social security benefits because of religious principles to avoid self-employment taxes on income from their performing religious services.

In 1982, the Supreme Court held that without an explicit statutory exemption, an employer who qualified for the IRC § 1402(g) self-employment exemption on his own income could not use his religious beliefs to avoid paying social security on the wages of his employees who were members of the same sect and who shared his religious objections to social security.⁹ Congress is permitted, but not required, to accommodate religious objections to social security coverage. Congress granted those employers tax relief in 1988, for tax years beginning in 1989.¹⁰

To date there are no statutory exemptions for failing to provide a taxpayer identification number when required on a tax return.

Case law and the Religious Freedom Restoration Act

Although the Supreme Court has not considered a case involving a taxpayer's objection to providing a dependent's social security number, there is relevant precedent.

⁴6 Tax Notes 1083 (February 26, 1990).

⁵P.L. 103-465, § 742.

⁶P.L. 104-188, § 1615, added IRC § 151(e).

⁷See Staff of the Joint Committee on Taxation, *General Explanation of Tax Legislation Enacted in the 104th Congress*, JCS-12-96, at 246-247 (1996).

⁸Added in 1960 by P.L. 86-778, § 105(c)(1).

⁹*United States v. Lee*, 455 U.S. 252 (1982).

¹⁰Technical and Miscellaneous Revenue Act of 1988, P.L. 100-647, § 8007, enacting IRC § 3127.

In *Bowen v. Roy*, 476 U.S. 693 (1986), parents of a Native American child challenged the constitutionality of using social security numbers in the federal food stamp and AFDC programs. The parents believed that using a number to identify their daughter would rob her spirit and prevent her from attaining greater spiritual power. The Supreme Court held that the statutory requirement that applicants provide a social security number as a condition of eligibility for the benefits did not violate the free exercise clause, which protects the right to believe, but not necessarily the right to engage in all religious practices. The Court found that the free exercise clause protected individuals from certain forms of governmental compulsion, but it did not give the individual a right to dictate the conduct of the government's internal procedures. The Court stated

Governments today grant a broad range of benefits; inescapably at the same time the administration of complex programs requires certain conditions and restrictions. Although in some situations a mechanism for individual consideration will be created, a policy decision by a government that it wishes to treat all applicants alike and that it does not wish to become involved in case-by-case inquiries into the genuineness of each religious objection to such condition or restrictions is entitled to substantial deference. Moreover, legitimate interests are implicated in the need to avoid any appearance of favoring religious over nonreligious applicants. 476 U.S. at 707.

The Court suggested that if the statute had created a mechanism for individualized exemptions, the government's refusal to extend the exemption for religious reasons might be a violation of the free exercise clause. However, where the statute was facially neutral and applied to all applicants with no provision for individual exemptions, and where use of the social security number clearly promoted a legitimate and important public interest, the Court found no violation. The Court noted that approximately 3.8 million families received AFDC benefits and approximately 20 million people received food stamps. Calling the size of these programs "of truly staggering magnitude," the Court found the use of social security numbers important to the administration of these programs.

The dissenting justices objected to the test used by the majority. The dissenters thought that the government had made a case that there was a compelling state interest in requiring the use of social security numbers, but the dissenters would also have required the government to show that granting a religious exemption to those who legitimately object to providing a social security number would harm its compelling interest in preventing welfare fraud.

Under the test used by the majority in *Bowen v. Roy*, the requirement that social security numbers be provided for dependents on tax returns may appear to be at least as important and compelling in the administration of the income tax as it was found to be for the administration of the food stamp and AFDC programs. The number of tax returns filed and the number of dependents claimed on tax returns dwarf the number of welfare recipients. Unique identifiers are important to the integrity of the system. If *Bowen v. Roy* is still the test to be applied, the government would appear to be under no obligation to waive the requirement that taxpayers furnish a social security number for their dependents in order to claim the dependency exemption and other tax benefits flowing from the ability to claim such an exemption.

The Religious Freedom Restoration Act, P.L. 103-141, 42 U.S.C.A. 2000bb, et seq, was enacted in 1993. It requires that a statute or regulation of general applicability not burden a person's free exercise of religion unless it is essential to further a compelling governmental interest and does so by the least restrictive means. This is essentially the test for which the dissenters argued in *Bowen v. Roy*. The purpose of the Religious Freedom Restoration Act was to restore the interpretation of the free exercise clause prior to the Supreme Court decision in *Employment Division, Oregon Department of Human Resources v. Smith*.¹¹ Since *Bowen v. Roy* predates that decision, it may be that the Religious Freedom Restoration Act was not intended to affect the *Bowen v. Roy* decision; however, the *Bowen v. Roy* decision did not require the government to demonstrate that requiring a social security number is the least restrictive means of ensuring the integrity of the tax system. Although *City of Boerne v. Flores*¹² has held the Religious Freedom Restoration Act to be unconstitutional as applied to the states, the Supreme Court has not decided the constitutionality of the Act as applied to the federal government.

Lower courts reviewing challenges to social security tax laws and to laws requiring furnishing of social security numbers have assumed the constitutionality of the Act, have held that the government has a compelling interest in collecting the tax, and have stated that payment¹³ or social security number¹⁴ requirement at issue was the least restrictive means of furthering that interest. A number of taxpayers have litigated their religious objections to supplying a dependent's social security number in order to claim a dependency exemption for their child. In *Miller v. Commissioner*, 114 T.C. No. 32 (June 23, 2000), the parents attached a notarized affidavit to their tax returns stating their religious objection to using identifying numbers for their two children. The parents believed that social security numbers represented "the mark of the beast" warned against in the Bible at Revelations 13:16-18. Except for supplying the social security numbers, the parents met all the statutory requirements for claiming the children as dependents. The Tax Court examined the statutory requirements, *Bowen v. Roy*, and the Religious Freedom Restoration Act, and found that although the taxpayers' free exercise of religious was burdened by the requirement, the government has a compelling interest in effectively tracking claimed dependency exemptions. The court also examined the statutory accommodations of religious opposition to participation in the social security system and found that a general religious exemption to the social security number requirement would

¹¹494 U.S. 872 (1990).

¹²521 U.S. 507, 117 S.Ct. 2157 (1997).

¹³*Browne v. United States*, 22 F. Supp.2d 309 (Vt. 1998); *Adams v. Commissioner*, 110 T.C. 137 (1998); *Kennedy v. Rubin*, 77 AFTR2d 558, 1995 U.S. Dist. Lexis 19834 (1995); *Packard v. United States*, 7 F. Supp.2d 143 (Ct. 1998).

¹⁴*Droz v. Commissioner*, 48 F.3d 1120 (9th Cir. 1994) (imposing self-employment taxes on taxpayer with sincere religious objection to social security system burdened taxpayer's free exercise of religion but was not unconstitutional); *Steckler v. U.S.*, 98-1 USTC 50,219 (E.D. La 1998)(automatic withholding on taxpayer who refused to supply a social security number when redeeming Treasury bonds is the least restrictive means of tracking taxable income even though use of a social security number was a substantial burden on the exercise of taxpayer's religious beliefs); *In re Floyd and Turner*, 193 B.R. 548 (1996)(requiring a bankruptcy petitioner preparer to furnish his social security number is the least restrictive means of tracking preparers nationwide); *Seaworth v. Pearson*, 203 F.3d 1056 (8th Cir. 2000)(an employer may deny employment to those who, for religious reasons, refuse to provide a social security number).

have a far greater impact on administration of the dependency exemption and would increase the risk of fraudulent claims being made. The court ruled that using alternate numbers, which the parents had proposed, would not serve the purpose of being able to cross-match a series of unique identifiers.¹⁵

Administrative Exception to TIN requirement

The 1986 Blue Book¹⁶ suggested that there is an administrative procedure for obtaining a taxpayer identification number for those who are exempted from social security self-employment taxes under IRC § 1402(g):

Congress noted that certain taxpayers, because of their religious beliefs, are exempted from the social security self-employment taxes (sec. 1402(g)). Congress intended that these taxpayers and their dependents who currently acquire their TINs from the IRS continue to be permitted to do so. It was the intent of Congress that these taxpayers continue to be exempted from the general requirement of obtaining a social security number from the Social Security Administration. Others of these taxpayers obtain their TINs under special procedures with the Social Security Administration. Congress intended that these procedures continue to be available to these taxpayers.¹⁷

In Letter Ruling 199950034, the IRS discussed its practice of exempting those members of recognized religious groups who have waived participation in the social security system from providing social security numbers or taxpayer identification numbers for their dependents. The memorandum contained in the letter ruling argued that the quoted language justified the IRS' practice of not requiring dependent social security numbers for children of those with IRC § 1402(g) exemptions. Interestingly, in order to obtain the 1402(g) exemption, members of the recognized religious groups must file IRS Form 4029 "Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits," and the form requires the applicant to obtain a social security number before filing the form.

The IRS does issue certain non-social security taxpayer identification numbers. Among these are ITINs, individual taxpayer identification numbers used by nonresident aliens and resident aliens ineligible to work in the U.S.; ATINs, temporary adoption identification numbers for children who are placed for adoption by an authorized placement agency, when the child does not already have a social security number; PTINs, preparer tax identification numbers for tax preparers to use on returns they are paid to prepare; and EINs, employer identification numbers, which are generally used by businesses.

¹⁵See also *Davis v. Commissioner*, T.C. Memo 2000-210 (July 10, 2000); *Kocher v. Commissioner*, T.C. Memo 2000-238 (August 4, 2000); FSA 199935006 (IRS ruling concluding taxpayers may not refuse on religious grounds to provide social security number for their dependents).

¹⁶Staff of the Joint Committee on Taxation, *General Explanation of the Tax Reform Act of 1986* at 1286-1287 (1987).

¹⁷*Id.*

Even if the IRS had a system for providing a non-social security number to objecting taxpayers, it is not clear that this would help taxpayers who have a religious objection to having any sort of government-furnished number. In *Callahan v. Woods*¹⁸, the Court of Appeals recognized that obtaining a social security number was a substantial burden on the free exercise of religion for those who believe that such numbers are the “mark of the beast.” Although the court recognized the government's compelling interest in using the social security number, it required the government to demonstrate that granting Callahan an exemption from the requirement of having a social security number in order to obtain welfare benefits would impede the government's efficient operation of the program. Although the case law does not reveal whether the government was able to make such a showing in Callahan's case, the tax system would be heavily burdened if a large number of religious objectors failed to use some sort of identifying number.

Congressional Power to Act

United States v. Lee suggests that Congress is not prohibited from passing a law establishing an alternative (non-numerical) system for taxpayers who have religious objections to having a number or having a number for their dependents, but the free exercise clause does not require that the tax system provide such an accommodation. As the Supreme Court stated in *Bowen v. Roy*,

Appellees may not use the Free Exercise Clause to demand Government benefits, but only on their own terms, particularly where that insistence works a demonstrable disadvantage to the Government in the administration of the programs. 476 U.S. at 711-712.

We are aware of one bill in the 106th Congress to provide a religious exemption from the requirement to provide a taxpayer identification number for a dependent. H.R. 2494 would permit a “taxpayer who has a sincerely held religious belief under which the taxpayer is conscientiously opposed to obtaining an identifying number with respect to a qualified dependent may, in lieu of such number,” provide certain other documents to prove that the dependent exists. Generally, bills such as the Freedom and Privacy Restoration Act of 1999, H.R. 220, which would substantially restrict the use of social security numbers as a means of identifying individuals and prohibit the use of government-wide uniform identifying numbers, would retain the use of the social security number for taxpayer identification purposes.

Without a statutory exemption, taxpayers are required to use social security numbers on their tax returns or face any penalties for failure to do so. This is especially true if the taxpayer wishes to obtain the benefit of exemptions, deductions, or credits which are contingent on furnishing the number.

¹⁸736 F.2d 1269 (9th Cir. 1984).