

Conscientious Objection to Military Service – Best Practices

Compilation and analysis of best practices to be compiled in accordance with Resolution 2002/45 of the Commission on Human Rights

Evidence submitted by Conscience and Peace Tax International (CPTI)

CPTI is primarily concerned with the situation of those whose conscientious objection extends to the conviction that it is no more consistent with their religious, moral or ethical beliefs to contribute to military activity financially, through taxation, as it is to do so by direct personal “service”.

At present we have no evidence that any State allows those with such an objection of conscience to withhold or divert that part of their tax liability which would fund military expenditure, although the right to do this has been, hitherto unsuccessfully, sought through the courts in various States, including Canada, Germany and the United States of America, and legislative proposals to allow this have been put Australia (1989), Belgium (each legislative session since 1985), Canada (1999), Germany (1990), Italy (1989), the Netherlands (1989 and 1992), Norway (2000), the United Kingdom (1990, 1994 and 1999) and the United States of America (each legislative session since 1972). This said, there are provisions in a number of States which allow citizens to move towards reconciling the fulfilment of their tax liabilities with their conscientious objection to war, and other instances of best practice can be identified in the handling of cases where citizens in the exercise of conscience on this issue find themselves in conflict with the applicable legislation.

The first category of best practice is where the State provides a structure which enables the citizen to reduce tax liability by making charitable donations. Some citizens assuage their consciences by thus reducing their tax liability by the amount they calculate would otherwise have been allocated to military expenditure. This solution is inherently unsatisfactory, however, in that such hypothecation is not usually acknowledged by the authorities; as far as they are concerned it has no effect on the purposes to which the residual tax liability is applied, so that the same proportions of a smaller sum go to military purposes.

In **ITALY**, for example, campaigners against taxation for military purposes have been able to set against their tax liability contributions to one of four Italian non-governmental organisations actively working for peace in different parts of the world:

Beati i Costruttori di Pace (www.beati.org),

Berretti Bianchi (www.peacelink.it/users/berrettibianchi),

C.E.F.A. organismo non governativo di cooperazione allo sviluppo e volontariato internazionale (www.volint.it/cefa/pubblica/index.htm),

and *Papa Giovanni XXIII - Associazione Comunita Papa Giovanni XXII Servizio Obiezione di Coscienza - Pace - Caschi Bianchi* (e-mail odcpace.apg23@libero.it).

We also know that some citizens have chosen to pay an appropriate portion of their tax directly to *l'ufficio nazionale per il servizio civile e la difesa popolare nonviolenta* (the National Bureau for Civil Service and Non-Violent Popular Defence) instead of to the

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Ministero della Finanze (the tax authority) and have not had their action challenged to date.

In the **UNITED STATES OF AMERICA** the peace organisations which contribute to the GI Hotline, one of the functions of which is to advise serving members of the armed forces who wish to obtain an honourable discharge as conscientious objectors, are legally recognised as non-profit corporations, and as such can receive tax-deductible donations from individuals. The counsellors of the GI Hotline are not obstructed from contact with servicemen and -women; although attitudes in the military vary, some military personnel in fact work closely with experienced counsellors.

The second category of best practices are those relating to what happens when citizens take it on themselves to withhold the relevant portion of their tax, whether from the sums for which they are personally liable or by enlisting the co-operation of an employer if the system applying is one where taxes are deducted at source. At issue here is whether the grounds of conscience are recognised and treated with more sympathy than failure to pay taxes through negligence or dishonesty. Accepting the need to collect the money physically, perhaps with publicity attached, has been the compromise reached in some cases in the United Kingdom, where employers have at employees' request held back the relevant proportion of the tax deducted from gross pay pending either an assurance that the money would not be used for military purposes (which has not been forthcoming), or the threat of criminal proceedings.

In this respect, by far the greatest number and most thoroughly documented cases have been in the **UNITED STATES OF AMERICA** and the following information on favourable practices and judicial rulings has been compiled by CPTI's representatives in that country:

The Federal Telephone Excise Tax has been, and remains, a particular target of those not wishing to pay for military purposes since 1966, when a dramatic rise in the tax, reversing a previous policy to phase it out was seen to be linked to the escalating cost of the Vietnam War. While the IRS (Internal Revenue Service) does not acknowledge a right to withhold or divert this tax, its Code of Federal Regulations, title 26, section 49.4291-1 (1996), states "If the person from whom the tax is required to be collected refuses to pay it "the collecting agent" (ie. the telephone company) "is required to report to the district director" (of the IRS) "the name and address of that person, the nature of the facility provided or service rendered, the amount paid therefore and the date on which paid. Upon receipt of this information the district director will proceed against the person to whom the facilities were supplied or the service rendered to assert the amount of tax due, affording that person the same district conference, protest, and appellate rights as are available to other excise taxpayers."

The equivalent clause at the time was interpreted by the Federal Communications Commission in two decisions of 1971 and 1972 concerning the case of Ms Martha Tranquilli as indicating that the unpaid tax was a liability of the individual, and not of the telephone company, which was therefore neither required nor permitted to enforce payment by discontinuing service. Although some subsequent cases have been distinguished on the facts from this precedent, this interpretation has never been overturned.

(This account has been based on information on pp27 - 29 of Hedemann, E (2003) War Tax Resistance: A Guide to Withholding Your Support from the Military (War Resisters' League, New York, 2003). The references given for the FCC rulings are:

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FCC 71-668, Docket 19271, FCC Reports, 30 FCC 2d, pp 835-839 (1971), and 38 FCC 2d, pp 192-198 (1972).

It may be noted that this compares favourably with the treatment in the United States and elsewhere of income tax deducted from income at source, where liability to the taxation authorities, and the possibility of penalties, are borne by the employer, not the taxpayer.)

Although complete failure to file a tax return remains a criminal offense, other penalties imposed on individuals refusing military taxes on the basis of conscientious objection are currently treated as civil penalties, which means that the objector cannot be subjected to imprisonment nor disadvantaged by a criminal record. Moreover, the refusal of conscientious objectors to military taxes to co-operate with the Internal Revenue Service by supplying information on their assets when summonsed has been repeatedly upheld by the courts since the ruling in the case of *United States v. Harper* (397 F.Supp.983 (E.D.Pa. 1975)), on the grounds that this is contrary to the Fifth Amendment: “No person shall be compelled to be a witness against him/herself”.

In recent test cases, the sincerity of conscientious objectors to military taxes has not been challenged even though their requested remedies have been denied.

In *United States vs Philadelphia Yearly Meeting of the Religious Society of Friends* (88 6368 and 886390) Judge Norma Shapiro on December 20, 1990 vacated the 50% (of withheld taxes) penalty imposed by the government on Philadelphia Yearly Meeting for not forwarding the withheld taxes of two staff members who were conscientious objectors to military taxes, even though she granted the government's levy of the withheld taxes. This issue is being reconsidered in the fall of 2003 in a similar case.

According to counselors, some conscientious objectors to military taxes, who have withheld taxes, are treated with benign neglect in some instances by the collection agency of the Internal Revenue Service.

Religious and other groups have set up escrow accounts and alternative funds to emphasize the human duty to pay for peace, as well as the human right not to pay for war. Such groups and their accounts are legally constituted.

The Congressional Joint Committee on Taxation has made the determination that more revenues would be collected if the Religious Freedom Peace Tax Fund Bill were enacted into law.

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