

# IRS Chosen People &/or The Chosen Taxprayers of Taxology



## OF CHURCH MANAGEMENT

The Sklars' legal battle, mounted pro bono by Washington attorney Jeffrey Zuckerman, never gained much traction, but it did produce this memorable language in a 2001 concurring opinion by Ninth Circuit Appeals Court Judge Barry Silverman:

"Why is Scientology training different from all other religious training? We should decline the invitation to answer that question. The sole issue before us is whether the Sklars' claimed deduction is valid, not whether members of the Church of Scientology have become **the IRS's chosen people.**" *Sklar v. Commissioner*, 282 F.3d 610, 622 (2002) (emphasis added)

### Scientologist Tax Trial to Open Today

By [JOSH GERSTEIN](#), Staff Reporter of the Sun | November 8, 2004

SAN FRANCISCO - A California accountant who sends his children to Orthodox Jewish schools is to appear in federal court this morning to attempt to force the Internal Revenue Service to grant him the same tax deduction for religious instruction that it accords to members of the Church of Scientology.

The trial, which is scheduled to open today in Tax Court in Los Angeles, is the second round in Michael Sklar's long running legal battle with the IRS over his claim that part of the tuition he pays for his children at Jewish day schools should be tax deductible.

"I've been hanging on for a decade because I feel it's imperative that this case be fought," Mr. Sklar said in an interview yesterday. "This kind of basically religious favoritism is very damaging, certainly for Jewish people, but probably for all people in the United States."

The case stems from an agreement the IRS reached in 1993 with the Church of Scientology, a religion founded in the early 1950s by a science-fiction writer, L. Ron Hubbard. The settlement ended what the Scientologists described as a "war" between the federal government and their church.

Under the pact, the IRS granted tax-exempt status to a variety of Scientology entities, while the church paid \$12.5 million to the government and agreed to financial controls to ensure that its leaders were not unduly enriched by payments from Scientology followers.

What troubles Mr. Sklar is a part of the settlement that allows Scientology members to deduct from their taxes amounts they pay for religious training or "auditing," a practice in which Scientologists purge themselves of troublesome thoughts by holding a device that measures the body's electrical impulses.

The IRS and the church agreed to keep the details of their deal secret, but Mr. Sklar noticed in late 1993 that the tax agency suddenly withdrew, without explanation, a written ruling that had barred Scientologists from taking deductions for religious programs. Mr. Sklar viewed the government's decision as conferring a benefit on Scientologists that is not extended to members of other religions.

"I see no reason why we should be any different. It's not like they're any more religious than we are," said the 45-year-old accountant, who lives in Los Angeles with his wife and six children.

In early 1994, Mr. Sklar filed for tax deductions for 55% of his tuition payments for the preceding three years. He said 55% represented the amount of time his children spent in Jewish religious studies at their schools.

After the IRS disallowed his deduction, Mr. Sklar filed a case in Tax Court in 1997. Appearing without a lawyer, he argued that the Constitution requires the government to treat members of all religions equally. "You just can't do it for one group and not do it for another," he said.

The Tax Court rejected Mr. Sklar's arguments, and he appealed to the 9th Circuit Court of Appeals. A Washington-based lawyer, Jeffrey Zuckerman, who is also an Orthodox Jew, agreed to take the case on a pro bono basis.

In 2002, a three-judge panel of the 9th Circuit turned down Mr. Sklar's appeal. The court sharply criticized the IRS for its secrecy and suggested that the deduction for Scientologists was probably unconstitutional. However, the judges said the accountant had not shown that the religious instruction his children receive in school was sufficiently similar to the kinds of training courses that Scientologists are allowed to deduct.

"Why is Scientology training different from all other religious training?" Judge Barry Silverman wrote in a concurring opinion that evoked the history lesson that accompanies a traditional Jewish seder. "We should decline the invitation to answer that question. The sole issue before us is whether the Sklars' claimed deduction is valid, not whether members of the Church of Scientology have become the IRS's chosen people."

The judges also suggested that some facts in the case were murky. For instance, it was not clear whether Mr. Sklar had paid more in tuition than he would have if he sent his children to secular schools.

A lawyer for the Church of Scientology, Monique Yingling, denied that the 1993 agreement entitles the religion to special treatment.

"The IRS agreed to treat the Church of Scientology like all other religions are treated. The Church of Scientology does not get a deduction for parochial school education and that's what the Sklars are trying to get," she said in an interview Friday.

Beginning today, Mr. Sklar will get another shot at proving his case, as the Tax Court considers whether to uphold a \$15,000 deduction for tuition that the accountant took on his 1995 return.

The IRS declined to discuss the dispute, citing taxpayer privacy laws, but Mr. Zuckerman said the agency has argued that the religious studies and secular classes at Jewish schools are so intertwined that it is impossible to determine what portion of the tuition goes toward religious education.

Mr. Zuckerman said that at least half the classes on any given day are religious. "There is truly strict separation. There's no overlap," he said.

While donations to charitable and religious organizations are tax deductible, tuition at religious schools generally is not. If the IRS considers a payment to be a quid pro quo, then a taxpayer can only deduct that portion of a donation that exceeds the value of the goods or services provided in return. However, the tax agency has allowed taxpayers who get intangible religious benefits from their gifts to deduct them in their entirety.

"If you're Jewish and you pay a synagogue so you can have a seat for High Holidays, it's technically a quid pro quo, but the IRS allows it to be deducted," Mr. Zuckerman said. He said Mormon tithes and Catholic pew rents are also fully deductible, even though the donors get some benefit from their gifts.

Mr. Zuckerman said that if his client prevails, purely religious programs for adults would also become deductible.

"Could Madonna deduct the cost of her Kabbalah class?" he asked. "Under our argument, the answer would be yes."

Jewish groups are divided about whether taxpayers should be able to deduct tuition at religious schools.

"We are certainly in favor of the deductibility of a portion of parochial school expenses and, if the court would go that way, we'd be very pleased," the director of public policy for the Orthodox Union, Nathan Diament, said. "People who use parochial schools are paying the same property taxes as everyone else that supports the public school system."

Mr. Diament said Mr. Sklar will be "the hero of many people if he's successful." However, Mr. Diament said the accountant's chances of prevailing are "rather slim."

An attorney with the American Jewish Congress, Marc Stern, said his group opposes such a deduction because of fears that it will drain revenue from public schools and because the benefits would accrue primarily to families with higher incomes. "It's not good public policy," he said.

Mr. Stern noted that Congress has considered and rejected proposals to create tax deductions for private and parochial school tuition. "It would be, I think, out of place for the court to create a social program the Congress hasn't mustered the political will to enact," he said.

For his part, Mr. Sklar said he bears no ill will toward the Scientologists. "The only anger I feel is toward the government," he said

<http://www.nysun.com/national/scientologist-tax-trial-to-open-today/4402/>

Judges Press IRS on Church Tax Break

By **JOSH GERSTEIN**, Staff Reporter of the Sun | February 8, 2008

A Jewish couple's bid to take a tax deduction they say the Internal Revenue Service reserves only for members of the Church of Scientology is getting a friendly reception from a federal appeals court, increasing the possibility of a ruling that could create a tax break for taxpayers of many religions who pay tuition to religious schools.

During arguments on the case this week, three judges who ride the 9th Circuit Court of Appeals expressed deep skepticism of the IRS's position that the way the agency treats Scientologists is irrelevant to the deductions the Orthodox Jews, Michael and Marla Sklar, took for part of their children's day school tuition and for after-school classes in Jewish law.

"The view of the IRS is it can unconstitutionally violate the Constitution by establishing religion, by treating one religion more favorably than other religions in terms of what is allowed as deductions, and there can never be any judicial review of that?" Judge Kim Wardlaw asked at the court session Monday in Pasadena, Calif.

"That is not at all what I said," a Justice Department lawyer representing the IRS, Ellen Delsole, said.

"That's the bottom line," Judge Wardlaw and a colleague on the panel, Harry Pregerson, both replied. "This does intrude into the Establishment Clause," Judge Wardlaw added.

The case stems from an agreement the IRS reached with the Church of Scientology in 1993 to end more than a decade of lawsuits, audits, and other enforcement actions involving the tax agency, Scientology entities, and church leaders. The church paid \$12.5 million, while the IRS agreed to drop arguments that Scientology, which was founded by L. Ron Hubbard, was not a bona fide religion.

At about the time of that deal, the IRS agreed to allow Scientologists to deduct at least 80% of the fees paid for "religious training and services."

The Sklars took similar deductions for religious education on their returns for the early 1990s, without challenge by the IRS. However, the IRS rejected their deductions for 1994 and beyond.

The 1993 pact between the IRS and the Scientologists was memorialized in a 72-page "closing agreement," which was published by the Wall Street Journal in 1997. However, the IRS has never acknowledged the accuracy of that document, and when the Sklars' attorney, Jeffrey Zuckerman, sought it from the agency, the IRS refused to turn the document over.

Mr. Zuckerman also subpoenaed the agreement and other records from the Church of Scientology and its president, Reverend Heber Jentzsch. The tax court judge who handled the case, John Colvin, quashed the subpoenas without explanation.

Ms. Delsole told the appeals court that the agreement with the Scientologists must be kept confidential for privacy reasons. "That's getting into the private taxpayer business of another taxpayer," she said.

The government lawyer asserted that the Sklars were not "similarly situated" to the Scientologists because the couple was seeking to deduct fees related to basic education for children and not the kind of training Scientologists undergo.

"How do we know that?" Judge Wardlaw asked, according to a recording of the hearing.

"You tell us you don't know anything either, but you read the Wall Street Journal," Judge Pregerson said to Ms. Delsole. She said that even if the benefit for Scientologists went too far, the solution was not to give it to "one taxpayer and one more religion."

"That's your best argument: two wrongs don't make a right," the third judge on the case, Ronald Leighton, said. He called the agency's refusal to explain its agreement with the Scientologists "a frustration that is hard to get beyond."

Ms. Delsole warned the court that the IRS would have difficulty resolving tax disputes if it could be forced to justify those deals in cases involving other taxpayers. "Every person who can find out about it from any other religious group is going to come in and want the same thing and that would really tie the IRS's hands," she said.

Members of racial minorities could also claim taxpayers of other races got better deals, the government lawyer said. "That's the sort of thing that would flow from the idea that the IRS can't settle and keep this confidential," she added.

Mr. Zuckerman rejected that idea. "If the IRS were saying white people were entitled to a certain deduction and black people were not, why would it be such a parade of horrors for the courts to come in and say the government may not act that way?" he asked.

The court made no immediate ruling, but an attorney who represents the Church of Scientology, Monique Yingling, said she was surprised by the judges' statements that data on the church's deal with the IRS was needed for the Sklars' case. "There's a lot of information already in the public record about this question," she said. "I don't know that there's any need for any additional information."

Ms. Yingling said the 1993 deal merely ensured parity for Scientologists under tax law. "They are not getting any kind of special treatment," she said.

Ms. Yingling said the training Scientologists can deduct is not the same as religious education. "The use of the word 'training' in Scientology is not analogous to education," she said. "It's just another way of advancing spiritually in Scientology."

Mr. Zuckerman said that alleged distinction is precisely what he wants to explore in the court case. "You need to get a factual record on that, then you can make your argument," he said

<http://www.nysun.com/national/judges-press-irs-on-church-tax-break/70957/>

United States Court of Appeals, Ninth Circuit.

Michael SKLAR; Marla Sklar, Petitioners-Appellants, v. COMMISSIONER OF INTERNAL REVENUE,  
Respondent-Appellee.

No. 00-70753.

Decided: January 29, 2002

Before PREGERSON, REINHARDT and SILVERMAN, Circuit Judges. Jeffrey I. Zuckerman, Curtis, Mallet-Prevost, Colt & Mosle, Washington, DC, for the appellants. Thomas J. Sawyer, Attorney, Tax Division, Department of Justice, Washington, DC, for the appellee. David Zwiebel, New York, NY, for amicus curiae Agudath Israel of America, in support of the appellants.

“Why is Scientology training different from all other religious training? We should decline the invitation to answer that question. The sole issue before us is whether the Sklars' claimed deduction is valid, not whether members of **the Church of Scientology have become the IRS's chosen people.**” [Emphasis added]

**Plaintiff [believes] Scientology, as well as, Taxology both have an established religious practice called “Auditing”.**

Plaintiff [believes] [*“Auditing is precise, thoroughly codified and has exact procedures.”*] (“[Auditing]”)

**As [Auditing] determines the IRS's chosen people**