

## The Bishop's rights to tax clerics

Uprawnienia biskupa do opodatkowania duchownych

Право епископа облагать налогом духовенство

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**Summary:** The diocesan tax is a compulsory cash benefit imposed on the income of both a juridical person and a physical person. There are two types of tax in canon law: ordinary and extraordinary tax. Although the Pontifical Council for Legislative Texts issued the authentic interpretation of c. 1263 and ruled that tax may not be imposed on Mass offerings, some doubts might arise as to the legitimacy of the tax imposed on "other physical persons". The conciliar Decree *Christus Dominus* states that priests are to contribute from their clerical income for the needs of the diocese "according to the bishop's determination". As such, tax may be imposed only in the event of grave necessity determined by the diocesan bishop following consultation with advisory bodies. Extraordinary exaction by its very nature should be understood as the voluntary offerings of clerics as their contribution for a specific diocesan purpose. The aim of the article is to draw attention to the legal requirements for imposing an extraordinary tax, the motives for establishing it, as well as possible tax exemptions. The analysis of the article is based on an exploration of the history of development of c. 1263; the concept of tax in canon law; extraordinary exaction; the subject of extraordinary exaction; the qualities of the extraordinary exaction; legal requirements of imposing extraordinary exaction; the question of income.

**Key words:** ecclesiastical goods, clerics, income, extraordinary exaction, power of governance

**Streszczenie:** Podatek diecezjalny jest obowiązkowym świadczeniem pieniężnym nakładanym na dochody zarówno osoby prawnej, jak i fizycznej. W prawie kanonicznym istnieją dwa rodzaje podatków: zwykły i nadzwyczajny. Chociaż Papieska Rada ds. Tekstów Prawnych wydała autentyczną interpretację kan. 1263 i orzekła, że podatek nie może być nakładany na ofiary mszalne, pojawiają się jednak wątpliwości co do zasadności podatku nakładanego na „inne osoby fizyczne”. Dekret soborowy *Christus Dominus* stanowi, że kapłani mają przeznaczać z dochodów duchownych na potrzeby diecezji „zgodnie z postanowieniem biskupa”. Jako taki może być nałożony tylko w przypadku poważnej konieczności, która jest określana przez biskupa diecezjalnego po zasięgnięciu opinii organów doradczych. Nadzwyczajne świadczenie, ze swej natury, powinno być rozumiane jako dobrowolne ofiary duchownych, jako ich wkład w konkretne cele diecezjalne. Celem artykułu jest zwrócenie uwagi na prawne wymogi nakładania podatku nadzwyczajnego na duchownych, motywy jego ustanowienia, a także rozumienie czym jest dochód. Rozważania dotyczą następujących aspektów: 1) historia rozwoju kan. 1263; 2) pojęcie podatku w prawie kanonicznym; 3) świadczenie nadzwyczajne; 4) przedmiot świadczenia nadzwyczajnego; 5) cechy nadzwyczajnego podatku; 6) prawne wymogi ustanowienia świadczenia nadzwyczajnego; 7) kwestia dochodu.

**Słowa kluczowe:** dobra kościelne, duchowni, dochód, nadzwyczajne świadczenie, władza rządzenia

**Резюме:** Епархиальный налог – это обязательный платеж, взимаемый с доходов как юридических, так и физических лиц. В каноническом праве существует два вида налогов: обычные и чрезвычайные. Хотя Папский совет по интерпретации законодательных текстов дал аутентичное толкование кан. 1263 и постановил, что налог не может взиматься с пожертвований на служение Мессы, существуют сомнения в законности налога, взимаемого с «других физических лиц». Согласно декрету Второго Ватиканского собора *Christus Dominus*, священники должны выделять из своего церковного дохода средства на нужды епархии, «как это определено епископом». Как таковой, он может быть наложен только в случае

крайней необходимости, которая определяется епархиальным епископом после консультации с совещательными органами. Чрезвычайный налог, по своей природе, должен пониматься как добровольное приношение духовенства, как его вклад в достижение конкретных епархиальных целей. Цель данной статьи – осветить юридические требования для введения чрезвычайного налога на духовенство, мотивы его установления и понимание того, что представляет собой доход. Положения статьи основаны на анализе существенных аспектов таких как: история развития кан. 1263, понятие налога в каноническом праве, чрезвычайный платеж, объект чрезвычайного платежа, характеристика чрезвычайного налога, юридические требования для установления чрезвычайного платежа, вопрос дохода.

**Słowa kluczowe:** церковное имущество, духовенство, доход, чрезвычайный платеж, власть управления

## Introduction

The diocesan tax is a compulsory financial charge imposed on juridical and physical persons by the diocesan bishop (cf. c. 1263). As such, it may be misunderstood by the taxpayers, although we have to keep in mind that every monetary burden belongs to the heritage and tradition of the Church. It is sufficient to mention tithes, which were abolished in 1837 in favour of a voluntary offering from the Christian faithful.<sup>1</sup> In canonical order, the right to impose diocesan tribute originates from an innate right of the Church. In accordance with c. 1260, the Church has an innate right to require from the Christian faithful those things which are necessary for the purposes proper to it. This *ius exigendi* in c. 1260 is independent of any civil power. For this reason c. 1263 gives the diocesan bishop the right to impose two types of tax commonly called ordinary and extraordinary tax. The latter entitles a diocesan bishop to impose a moderate and proportionate exaction upon other physical persons, which also refers to clerics. Although the Pontifical Council for Legislative Texts issued an authentic interpretation of c. 1263 and ruled that the tax may not be imposed on Mass offerings and public juridical persons not subject to the jurisdiction of the diocesan bishop, doubts arise as to the legitimacy of the extraordinary tax imposed upon the clerics. If so, what are the legal requirements to implement it? But is it not an abuse of ecclesiastical authority by the diocesan bishop? What are defensive measures adopted by the law?

In order to get a better understanding of diocesan taxes, we have to recall its genesis. In the 1917 code, the maintenance of the diocese was based mainly on the benefice system. The *beneficium* was primarily perceived as a means of support for

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1 M.D. Cebriá-García, *Los tributos en el Ordenamiento canónico. Su praxis*, Ius Canonicum 1999, Volumen especial, p. 445.

the benefice – the holder of the office of parish priest.<sup>2</sup> This resulted in the parish gaining greater economic autonomy. The assets of the parish were perceived as its and its alone. The new code restored the meaning parish and its property. Following the Second Vatican Council, it became the primary unit of the Church. Therefore, the diocesan bishop, as a pastor of the local Church has a right to impose taxes upon other physical and juridical persons subject to him to meet the diocesan's financial needs. Consequently, clerics should contribute to the common good of the diocese. The purpose of this article is to draw attention the nature of the diocesan tax imposed upon the clerics.

### 1. History of development of c. 1263

The discipline of c. 1263 did not exist in the 1917 code. Nonetheless, for some of American canonists the diocesan tax is “the most significant and the most controversial canon.”<sup>3</sup> The first discussion on it took place in early 1967. Then, reflections emerged on what direction would develop c. 1263. According to the report published in 1973, the initial proposal of the *Coetus studiorum* “*De Bonis Ecclesiae Temporalibus*”<sup>4</sup> gave local ordinaries the right to impose taxes on ecclesiastical persons, physical and moral, for the good of the diocese. The 1973 report added that the prohibition on taxing Mass offerings should be situated in a more appropriate place in the new code and explained that the faithful are to be induced more by persuasion than by coercion to contribute to the support of the Church by revenues sought and according to norms approved by the episcopal conference.<sup>5</sup> The 1977 Schema issued by the *coetus* had given the local ordinary the right to impose a tax on physical persons and juridical persons (private and public) insofar as it is necessary for the good of the diocese, after hearing that the presbyteral council and the episcopal conference was to establish norms to govern these taxes. Meanwhile, the faithful were to support the Church by responding to appeals and according to norms is-

2 M.J. Barrett, *The Theological Case for Progressive Taxation as Applied to Diocesan Taxes or Assessments under Canon Law in the United States*, *The Jurist* 2003, vol. 63, no. 2, p. 321.

3 D.J. Frugé, *Diocesan Taxation of Parishes in the United States Sign of Communio or Source of Tension?*, *CLSA Proceedings* 1998, vol. 60, p. 69; R.L. Kealy, *Diocesan Financial Support. Its History and Canonical Status*, Rome 1986, p. 310; M.J. Barrett, *The Theological Case for Progressive Taxation...*, p. 317.

4 Hereinafter: *coetus*.

5 Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Acta commissionis*, *Communicationes* 1973, no. 5, p. 95.

sued by the bishops' conference. Bishops were to lead the faithful to fulfil this obligation more by persuasion than by coercion.<sup>6</sup>

The wording found in the legislative process of c. 1263 gave the diocesan bishop unlimited power as regards both the persons subject to the tax and the goods which can be taxed. In light of comments received and its own discussion, the *coetus* decided to eliminate reference to the bishops' conference since the various needs of individual dioceses prevent uniform norms for the scope of the entire episcopal conference. It was also concluded that any diocesan tax on juridical persons should be proportionate to their income and an extraordinary tax should be imposed by the diocesan bishop only in cases of grave necessity. The diocesan finance council and presbyteral council must be heard before the tax may be imposed, and no tax can be levied on Mass offerings.<sup>7</sup>

The 1980 Schema raised several objections by some cardinals, but all of them were rejected. The secretariat agreed to place this canon after the canon on appeals, which it had heretofore preceded. It was also explained that this inversion would show that appeals are the ordinary way to obtain ecclesiastical goods and taxation is the extraordinary way.<sup>8</sup>

The new formulation of the 1982 Schema was forwarded to Pope John Paul II, who discussed the proposed new code with a small group of canonists. Ultimately, the promulgated code omitted reference to the impossibility of taxing Mass offerings, even though it had been mentioned in the earlier drafts.<sup>9</sup> Instead, they added the phrase "without prejudice to particular laws and customs which attribute greater rights to him."<sup>10</sup>

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6 Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Coetus studiorum "De Bonis Ecclesiae Temporalibus"*, Communicationes 1980, vol. 12, no. 2, p. 401.

7 J.A. Renken, *Church Property. A Commentary on Canon Law Governing Temporal Goods in the United States and Canada*, Ottawa 2009, p. 82.

8 Pontificium Consilium de Legum Textibus Interpretandis, *Acta et documenta Pontificiae Commissionis Codici iuris canonici recognoscendo, Congregatio plenaria diebus 20-29 octobris 1981 habita*, Romae 1991, pp. 486-493.

9 R.L. Kealy suggests that the omission on taxing Mass offerings is the result of an apparent oversight. Very early in the process of drafting the proposed new legislation recommended that the mentioned prohibition should be in a more appropriate place elsewhere in the 1983 code. R.L. Kealy, *Diocesan Financial Support...*, pp. 339-340.

10 J.A. Renken, *Church Property...*, p. 86.

## 2. The concept of tax in canon law

The 1983 code speaks about tax in c. 1263.<sup>11</sup> Nowhere, however, does it define what is a tax in canon law and how it should be interpreted. It could be defined as a pecuniary obligation imposed by the authority upon its subjects with no direct and concrete consideration in return. For Aznar Gil, it is a “different contribution in the form of goods (usually currency) from juridical or physical persons made in response to compulsory request of the legitimate ecclesiastical authority. The extent of such contributions is not always predetermined and may or not involve the performance of some public service.”<sup>12</sup> The idea of diocesan tax in a strict sense consists of the proper monetary contribution of physical or juridical persons, predetermined by the diocesan bishop. It does not involve the performance of services on the part of the ecclesiastical community.<sup>13</sup>

In turn, for Martin De Agar, the diocesan taxes contained in the code “have certain common characteristics: a) it is up to the diocesan bishop to determine how to impose them in the most appropriate and effective manner; b) they are of a general character; one cannot impose them on the singular subject; c) they are diocesan: their establishment, subjects, collection and final application must all take place in the same diocese; d) the collection quota must be always moderate and attuned to the financial state of each passive subjects.”<sup>14</sup> Tadeusz Pawluk defines tax as a one-time, temporary or permanent cash benefit that is mandatory in character; imposed upon juridical and physical persons subject to the diocesan bishop and is non-refundable.<sup>15</sup> The taxes are commitments, which are imposed by the diocesan bishop for diocesan needs. We have to keep in mind that taxes are the secondary sources of acquisition of ecclesiastical goods. The first source is always a voluntary offering.

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11 R.L. Kealy, *Diocesan Financial Support...*, p. 310.

12 F.R. Aznar Gil, *La administración de los bienes temporales de la Iglesia*, ed. 2, Salamanca 1993, p. 96. It must be taken into account that included in the concept for this author are taxes and offerings upon the provision of pastoral services, that are of a controversial juridical nature.

13 Ibidem.

14 J.T. Martín De Agar, *Beni temporali e missione della Chiesa*, Roma 1997, p. 661.

15 T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II*, vol. 4. *Dobra doczesne Kościoła. Sankcje w Kościele. Procesy*, Olsztyn 1990, p. 32; P. Kaleta, *Ecclesiastical Patrimonial Law*, Manchester 2015, p. 81.

### 3. Extraordinary exaction

Nowhere does the 1983 code stipulate extraordinary tax as it is widely used in commentary of canon law. The Latin text of c. 1263 points to the word *exactionem*, which means exaction or debt.<sup>16</sup> This change of terminology is not accidental. It seems that those two distinctive words: ‘tax’ and ‘exaction’ cannot be equal. The extraordinary exaction cannot be a permanent instrument of taxation to meet the needs of the diocese.<sup>17</sup> Canon 1263 explicitly states that it must be imposed only “in case of grave necessity” (Lat. *in casu gravis necessitatis*). This constraint dictates that the bishop restrict any extraordinary exactions to a limited duration. It cannot be for routine expenditures, nor the tax be imposed regularly to provide for recurring diocesan needs.<sup>18</sup> It is because the exaction is envisioned as being extraordinary tax. For the permanent financial needs of a diocese, the diocesan bishop could increase the ordinary tax amount for public juridical persons by following the prescribed procedure or order a special collection (c. 1266). As Tomasz Gałkowski rightly noted, the reference to voluntary offerings of the faithful and their responsibility for the ecclesial community is more efficient than imposing an extraordinary tax on physical persons.<sup>19</sup>

When it comes to extraordinary exaction, it should be applied if particularly urgent and important, or during an unusual set of circumstances. For example, the diocese may need revenues to pay expenses related to a papal visit, build or repair a cathedral or seminary, or, more recently, to pay legal fees or damages arising from sexual abuse cases.<sup>20</sup> Robert Kennedy notes that extraordinary exaction can be imposed if the ordinary sources of income are insufficient.<sup>21</sup>

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16 [www.online-latin-dictionary.com](http://www.online-latin-dictionary.com)

17 D. Tirapu, *The Acquisition of Goods (cann. 1259-1272)*, in: *Exegetical Commentary on the Code of Canon Law*, ed. Á. Marzoa, J. Miras, R. Rodríguez-Ocaña, vol. 4/1, Montreal-Chicago 2004, p. 57.

18 J.A. Renken, *Church property...*, p. 93.

19 T. Gałkowski, *Podatek „dla pokrycia potrzeb diecezjalnych”*, *Łódzkie Studia Teologiczne* 2019, vol. 28, no. 3, p. 81.

20 M.J. Barrett, *The Theological Case for Progressive Taxation...*, p. 336.

21 R.T. Kennedy, *The Temporal Goods of the Church*, in: *New Commentary on the Code of Canon Law*, ed. J.P. Beal, J.A. Coriden, T.J. Green, New York 2000, p. 1464.

#### 4. The subject of extraordinary exaction

Unlike the ordinary tax, which only applies to public juridical persons subjected to the diocesan bishop, extraordinary exaction can be imposed upon “other physical and juridical persons” (both public and private juridical persons in the diocese). However, a problem arises in that the 1983 code does not explain who should be understood as physical persons. The previous 1917 code meant all holders of benefices and lay confraternities subject to diocesan bishop (c. 1504). The 1983 code does not make it clear. *The Coetus studiorum »De Bonis Ecclesiae Temporalibus«*, during the discussion on the draft of c. 1263 agreed that the concept of “physical persons” should be understood as “ecclesiastical physical persons”, i.e. “lay persons” who can support the Church by voluntary offerings.<sup>22</sup> The ambiguity of the phrase “ecclesiastical physical persons” impedes its reference to clerics specifically. Rather, it relates to all Christian faithful subject to the diocesan bishop. The lack of an authentic interpretation could raise doubts as to whether they could be subject to any tax.

We must keep in mind that the temporal goods of physical persons (both clerics and lay persons) are not ecclesiastical goods (see c. 1257). For Jesus Miñambres, ecclesiastical goods are the basis for tax. For this reason, the Church authority has the right to redistribute ecclesiastical goods for diocesan needs. It is because the diocese and the parish have the same purpose, which they fulfil in the name of the Church.<sup>23</sup> Furthermore, the diocesan bishop is to exercise careful vigilance over the ecclesiastical goods in his diocese (c. 1276).

Although the phrase “other physical persons” does not strictly indicate who is a taxpayer, the diocesan bishop could select or exclude some physical persons (clerics or lay persons) from extraordinary exaction, The one condition must be met – all taxpayers are to be within the bishop's diocese.<sup>24</sup>

Alternatively, the response to the doubt raised is found in the decree concerning the pastoral office of bishops in the Church *Christus Dominus*, which states that priests are to contribute from their clerical income for the needs of the diocese “according to the bishop's determination.”<sup>25</sup> This follows from the fact that the

22 See W. Wójcik, *Dobra doczesne Kościoła*, in: *Komentarz do Kodeksu z 1983 r.*, vol. 4. *Księga V. Dobra doczesne Kościoła. Księga VI. Sankcje w Kościele*, W. Wójcik, J. Krukowski, E. Lempa, Lublin 1987, p. 56.

23 J. Miñambres, *Il tributo diocesano ordinario come strumento di governo*, *Ius Ecclesiae* 2004, vol. 16, no. 3, p. 629.

24 R.T. Kennedy, *The Temporal Goods of the Church...*, p. 1464.

25 Concilium Oecumenicum Vaticanum II, *Decretum de pastorali Episcoporum munere in Ecclesia “Christus Dominus”* (28.10.1965), AAS 58(1966), pp. 673-696, no. 28.

requirements of the gospel life in relation to temporal goods apply particularly to the clergy. Nobody more than clerics are called to bear witness to Christian life including through the dimension of temporal things. On the other hand, all the Christian faithful are obliged to assist with the needs of the Church (c. 222 § 1), regardless of whether they are lay persons or clerics. For this reason, the Church, in accordance with c. 1260, has an innate right to require from the Christian faithful those things which are necessary for the purposes proper to it.

According to Tomasz Gałkowski, the Church cannot only limit itself to appeals but can also impose a tax on “physical persons” subject to diocesan bishop governance.<sup>26</sup> However, it appears that the extraordinary exaction should not be obligatory but voluntary. It would be consistent with a fully conscious and active participation in the Church. In this context, it is important to keep in mind c. 282 §2 which stipulates that an “ecclesiastical office” cannot be regarded as a source of profit (PO 17). Clerics should wish to use their goods (Lat. *velint impedere*) for the good of the Church and works of charity. It is not an obligation, but an earnest wish of the legislator to do so.

Exempt from bishop’s governance are members of institutes of consecrated life so designated by the Supreme Pontiff (cc. 591; see also 588; 594).<sup>27</sup> Although members of religious institutes and societies of apostolic life are subject to the diocesan bishop regarding the care of souls, the exercise of divine worship, and work of apostolate (cc. 678 § 1; 738 § 1), they possess a just autonomy of life (c. 586; 738 § 1) and cannot be subject to extraordinary diocesan tax.<sup>28</sup> It also concerns members of institutes of consecrated life of diocesan right.<sup>29</sup>

The Latin construction of c. 1263 indicates that the clause “without prejudice to particular law and customs which attribute greater rights to him” does not allow the introduction of new particular legislation to grant broader powers to bishops, for to do so would make the restrictions of the canon meaningless.<sup>30</sup> For some diocesan bishops, however, it became grounds for imposing extraordinary exaction on clerics.<sup>31</sup> In fact, that clause was added during the 1982 private papal consultation and aimed to take into account the existing concordats, mainly in Austria, Switzerland

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26 T. Gałkowski, *Podatek...*, p. 74.

27 See more: L. Okulik, *La potestad tributaria del Obispo diocesano y la interpretación del canon 1263 del CIC*, Anuario Argentino de Derecho Canónico 2004, vol. 11, pp. 431-449.

28 See J.A. Renken, *Church property...*, p. 89.

29 R.L. Kealy, *Diocesan Financial Support...*, p. 333.

30 R.L. Kealy, *Taxation, assessments and extraordinary collections*, in: *Church Finance Handbook*, ed. K.E. McKenna, L.A. DiNardo, J.W. Pokusa, Washington 1999, p. 85.

31 For instance, Dolores Cebriá-Gracia gives many examples of extraordinary tax, which were imposed on clerics in Spain. M.D. Cebriá-García, *Los tributos en el Ordenamiento canónico...*, p. 455.

and Germany.<sup>32</sup> This is because there was a church tax in those countries. The state acts as an agent for the Church and not in its own name and the particular dioceses have to empower the civil finance ministry to collect the tax. Thus, without this clause in c. 1263, they would be unable to do so.<sup>33</sup>

In practice, many diocesan bishops use this clause to enact their own legislation. The extraordinary exaction can take various forms, from obligatory to voluntary. In Malaga, for instance, priests who receive a salary higher than stipulated in the particular law, they are to pay into the General Priesthood Fund, as a contribution to the salary of other priests.<sup>34</sup> It can also take the form of voluntary contributions for a specific purpose. For instance, in the diocese of Toruń, there are agreed amounts of contributions for a specific fund (e.g. general diocesan fund, pastoral fund, mutual assistance fund for priests or seminary fund).<sup>35</sup>

It should be highlighted that the extraordinary exaction (c. 1263) should not be confused with a special institution for the support of clerics (c. 1274 § 1) or with a common fund (c. 1274 § 3). The above mentioned special institution is erected by formal decree in a stable manner and it cannot take the form of extraordinary exaction, which is temporary or a one-time cash payment. Rather, it is to take a voluntary contribution of the clergy.

In accordance with c. 1276. "It is for the ordinary to exercise careful vigilance over the administration of all the goods which belong to public juridical persons subject to him. For this reason, the diocesan tax should relate to public juridical persons, which property is legally protected by the diocesan bishop."<sup>36</sup> Aznar Gil also makes a similar conclusion. According to him, the ecclesiastical taxation should focus primarily on diocesan institutions (e.g. parishes, etc.), afterwards on clerics.<sup>37</sup>

## 5. The qualities of extraordinary exaction

Extraordinary exaction, like any ordinary tax, should be a moderate and proportionate to the income of the taxpayers and for the diocesan needs. The wording

32 Cf. V. de Paolis, *I beni temporali della Chiesa*, Bologna 1995, p. 111.

33 A. Hollerbach, *Kirchensteuer und Kirchenbeitrag*, in: *Handbuch des katholischen Kirchenrechts*, ed. J. Listl et al., Regensburg 1983, p. 897.

34 M.D. Cebriá-García, *Los tributos en el Ordenamiento canónico...*, p. 445.

35 *Pierwszy Synod Diecezji Toruńskiej*, Toruń 2011, status 469-475.

36 J. Miñambres, *Il tributo diocesano ordinario...*, p. 629.

37 F.R. Aznar Gil, *La administración...*, p. 199.

“moderate” indicates that the tax must be reasonable in relation to the economic situation of the taxpayers.<sup>38</sup> Robert Kealy notes that moderate tax cannot be understood in absolute terms.<sup>39</sup> It is to cover diocesan operational expenses. For Nicolas Cafardi, for instance, moderate tax should be equal to the need for which it is imposed. It should not be so extreme as to deprive those taxed of their means of livelihood. This tax could be determinable to a certain degree of exactitude. If the tax piles up diocesan surpluses, beyond needs, at the expense of the taxpaying parishes, then it is no longer a moderate tax, but an immoderate one, and hence it is illegal.<sup>40</sup> The Pontifical Council for Legislative Text<sup>41</sup> in answer to the recourse against a general decree, which establishes a diocesan tribute, ruled that “moderate tax” must take into account the particular circumstances of the locale. All decisions are reserved for the diocesan bishop.<sup>42</sup> In fact, moderate tax means that must be reasonable in relation to the financial situation of the taxpayers.

The second premise of extraordinary exaction is a proportionality to the income of all persons affected. The Latin term *proportionatum* means that a certain rate of tax must be used.<sup>43</sup> The rules of fairness imply that all the factors affecting the financial situation of the taxpayers must be taken into account and it not simply be a tax on gross income. PCLT highlights that the imposition of the tax cannot give rise to inequality. Therefore, it may be effective to apply it in the right proportion.<sup>44</sup> Consequently, various factors should be taken into consideration. For instance, one priest who is in a large parish may have a higher gross income than a priest who works in a small village parish with no parish school.<sup>45</sup> For this reason, the diocesan bishop should considerate all factors affecting the financial situation.

The third premise of imposing ordinary tax are the diocesan needs. Interestingly, c. 1263 does not specify the exact nature of these needs, although reference can be made to the proper objects of ecclesiastical goods mentioned in cc. 1254 § 1; 114 § 2; and 222 § 1.<sup>46</sup> In determining them, all obligations of the diocese, both moral

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38 Cf. P. Kaleta, *Ecclesiastical...*, p. 86.

39 R.L. Kealy, *Taxation, assessments and extraordinary collections...*, p. 82.

40 N.P. Cafardi, *Assessment of Parish Income for Diocesan Needs*, in: *CLSA Advisory Opinions 1994-2000*, ed. A.J. Espelage, Washington 2002, p. 401; P. Kaleta, *Ecclesiastical...*, p. 87.

41 Hereinafter: PCLT.

42 Pontifical Council for Legislative Text (PCLT), *Decretum* (08.02.2000), *on the recourse against a general decree which establishes a diocesan tribute*, *Communicationes* 2000, vol. 32, pp. 15-23.

43 See A. Perlasca, *Tributo moderato ordinario e straordinario (can. 1263)*, *Quaderni di Diritto Ecclesiale* 2009, vol. 22, pp. 118-129.

44 PCLT, *Decretum* (08.02.2000), no. 4.1.

45 See R.L. Kealy, *Taxation, assessments and extraordinary collections...*, p. 82.

46 P. Kaleta, *Ecclesiastical...*, p. 82.

and legal should be taken into account. For instance, renovation of the cathedral, establishment of a clergy retirement centre, erection of a seminary)<sup>47</sup> and secular needs, especially for the poor, should be considered.

## 6. Legal requirements for imposing extraordinary exaction

Canon 1263 gives the diocesan bishop the right to impose this type tax. He is entirely free not to impose any tax. In order to establish an extraordinary exaction the diocesan bishop is to hear the opinion (but not the consent) of the presbyteral council<sup>48</sup> and the diocesan finance council. This is because an extraordinary exaction cannot be established by the bishop alone.<sup>49</sup> This consultation is no *pro forma* exercise. The bishop's failure to consult with either body invalidates a tax and it relieves those persons subject to the tax from the obligation to pay it. In accordance with c. 127 § 1, a superior needs to convoke the college of consultors and presbyteral council to discuss the question and it requires for validity that the counsel of all those who are present be sought. This consultation<sup>50</sup> obliges those who have been consulted to speak honestly and forthrightly (c. 127 § 3). Finally, c. 127 stipulates that the bishop should not act contrary to the advice given unless he concludes that there is an overriding reason for so doing (c. 127 § 2). In a given situation, the bishop should also articulate his overriding reason, especially given the circumstances in the early 2000s when both the laity and others are calling for more transparency in both administrative decisions and financial reporting.<sup>51</sup> The subject of the consultation with mentioned advisory bodies should concern grave necessity,<sup>52</sup>

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47 J.A. Renken, *Church property...*, p. 87.

48 The *Coetus* explicitly rejected a proposal requiring the consent of the presbyteral council, dated 7 June 1967. See *Communicationes* 2004, vol. 36, p. 261.

49 CCEO provides that the intervention of the eparchial financial council is required before the establishment of the diocesan tax. See c. 1012 §1 CCEO. Codification commission did not adopt the proposal to add another pastoral council or Conference of Bishops. W. Wójcik, *Dobra doczesne Kościoła...*, p. 56.

50 In addition, Kennedy suggests that the bishop may want to consult the diocesan pastoral council, if one exists, plus the superiors of any religious institutes of diocesan right and the representatives of any other categories of public juridical persons that the bishop contemplates taxing. R.T. Kennedy, *The Temporal Goods of the Church...*, p. 1464.

51 M.J. Barrett, *The Theological Case for Progressive Taxation...*, p. 335.

52 The needs of the diocese include: the seminary, restoration of churches, support for the clergy, charity. Cf. W. Wójcik, *Dobra doczesne Kościoła...*, p. 56.

the frequency of instalments, method of payment as well as the criteria for determining what qualifies as taxable income.<sup>53</sup>

When it comes to the frequency of extraordinary exaction it can be temporary or a one-off cash benefit.<sup>54</sup> However, it should be noted that the diocesan bishop himself assesses the specific needs,<sup>55</sup> but the opinion of those consulted is essential to the decision-making process. Any change in these elements will result in an amendment to the tax that requires a new consultation with both the finance and presbyteral councils.

The detailed provisions regarding the diocesan tax should be included in the particular law of the diocese. The diocesan bishop should issue the appropriate general decree, which adapts the tax to the requirements of the canonical legislation (c. 51).<sup>56</sup> It must specify precisely who is subject to the taxation, define assessable income, state the applicable tax rates or percentages, exemptions, describe the tax's purpose (generic or specific), and articulate the reasons for the decree.<sup>57</sup> The rationality of this decree must be subordinated to the common good of the community for which it was issued. Therefore, the bishop cannot issue a decree imposing a tax that will not serve the common good. According to c. 1734 § 2-3, whenever a priest considers himself aggrieved by a decree, he may make the petition within the pre-emptory period of ten useful days from the legitimate notification of the decree. Should this action not succeed, eventually he may take recourse to the Apostolic Signatura (PB 123).

## 7. The question of income

Canon 1263 expressly limits that the extraordinary exaction is to be imposed on "income" but it does not specify what does mean it how the diocesan bishop should determine it. We have to admit it is extremely difficult to define the income of clerics. It is because they are not in gainful employment and what they receive are voluntary gifts for pastoral duties. In this context one might ask whether a priest can donate money for tax if the donor's intention is opposed to it. In accordance with c. 1267 § 3 "offerings given by the faithful for a certain purpose can be applied

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53 R.T. Kennedy, *The Temporal Goods of the Church...*, p. 1449.

54 T. Pawluk, *Prawo kanoniczne według Kodeksu Jana Pawła II...*, p. 32.

55 See D.J. Frugé, *Diocesan Taxation of Parishes...*, pp. 68-81.

56 J.A. Renken, *Church Property...*, p. 79; P. Kaleta, *Ecclesiastical...*, p. 82.

57 See R.L. Kealy, *Taxation, assessments and extraordinary collections...*, p. 90.

only for that same purpose". From this it follows that every priest must respect and protect the intentions of donors,<sup>58</sup> who did not wish their donations to be subject to a tax.<sup>59</sup> Therefore, any tax imposed on clerics cannot take offerings from the faithful whose intention is opposed to taxation. Unless a donation was intended for the "general purposes" of the juridical person, without further specification, it would then be subject to diocesan taxation, it is because such a donation is a part of the juridical person's income.<sup>60</sup>

While analysing the possibility of imposing extraordinary tax, we can ask whether a tax may be imposed upon Mass offerings, which are the donations of the faithful for the celebration of Masses. The 1917 code did not allow for the imposition of a tax on Mass offerings (c. 1506)<sup>61</sup>, likewise, Code of Canons of the Eastern Churches<sup>62</sup> in c. 1012 *expressis verbis* stipulates: "no tax can be imposed on the offerings received on the occasion of the celebration of the Divine Liturgy". In fact, it was not included in the 1983 code.<sup>63</sup> Interestingly, early in the revision process, the intention was made known to transfer the prohibition on such a tax to a more appropriate place in the code.<sup>64</sup> However, this provision did not find its way into any other canon.<sup>65</sup> Nevertheless, the Pontifical Council for the Interpretation of Legislative Texts, in its decree dated 6 February 2000, referred to above, notes specifically that a tax cannot be imposed on Mass offerings presented by physical persons. Moreover, the PCLT proposes that any new legislation would include an explicit ban on introducing a tax on Mass offerings.<sup>66</sup>

There also appears to be a problem concerning the recovery of tax liabilities. The Church does not have an adequately equipped mechanism for tax enforcement. Today the usage of ecclesiastical penalties, even in the form of the deprivation of canonical mission to teach religion in school, seems to be inappropriate. With reference to cc. 222; 1341, pastoral rather than legal means should be observed.<sup>67</sup>

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58 The intention of the donor is highlighted in a number of canons: 121; 122; 123; 326 §2; 531; 616 § 1; 706, 3°; 954; 1267 § 3; 1284 §2, 3°; 1300; 1302 § 1; 1303 § 2; 1304 § 1; 1307 § 1 and 1310 § 2.

59 D.J. Frugé, *Diocesan Finance Council and a Capital Campaign*, in: *CLSA Advisory Opinions 1994-2000*, ed. A.J. Espelage, Washington 2002, p. 406.

60 P. Kaleta, *Ecclesiastical...*, p. 82.

61 T. Pawluk, *Danina diecezjalna*, in: *Encyklopedia katolicka*, vol. 3, ed. R. Łukaszyk et al., Lublin 1979, col. 1015.

62 Hereinafter: CCEO.

63 P. Kaleta, *Ecclesiastical...*, p. 87.

64 *Communicationes* 1973, vol. 5, p. 95. Most likely to the section of canons governing Mass offerings.

65 This could have happened because different *Coetus* were involved in the drafting of various sections of the *Code*.

66 P. Kaleta, *Ecclesiastical...*, p. 88.

67 *Ibidem*.

The legislator, in the Code of Eastern Churches does not distinguish between ordinary and extraordinary taxes (c. 1012 CCEO). It allows the eparchial bishop to impose a tax upon juridical persons subject to him “insofar as it is necessary for the good of the eparchy”, after he has received the consent (not the advice) of the eparchial finance council (with no reference to the presbyteral council). The tax is to be proportionate to the income of the juridical person. The canon specifically excludes taxes “on the offerings received on the occasion of the celebration of the Divine Liturgy”, something not mentioned in the Latin law. It allows for the imposition of taxes (Lat. *tributa*) on physical persons “only according to the norm of particular law of their own Church *sui iuris*.”<sup>68</sup>

## Conclusion

The points explored in this study are an attempt to show the bishop’s rights to tax clerics by extraordinary exaction. Following the Second Vatican Council, when the transformation of the benefice system followed, the need for a new way of financing the diocese emerged in the Church. One of them is a tax for diocesan needs. Canon 1263 mentions “other physical persons”. It is not clear whether the diocesan bishop could impose a tax on clerics. The answer is included in the conciliar Decree *Christus Dominus*, which states that priests are to contribute from their clerical income for the needs of the diocese “according to the bishop’s determination”.

The extraordinary exaction may be imposed only in case of grave necessity determined by the bishop following consultation with advisory bodies. By nature, the extraordinary exaction may not be permanent one. When it comes to the permanent financial needs of a diocese, the diocesan bishop should order a special collection (c. 1266) or increase ordinary tax (c. 1263). Also, the 1983 code does not specify the income of the clerics. PCLT in *Decretum* (08.02.2000) ruled that the tax may not be imposed on Mass offerings. Each of the priests is to respect and to protect the intentions of the donors (c. 1267 § 3). For this reason, all requirements determined by the canon law should be adapted in a decree. According to c. 1734 § 2-3, whenever a priest considers himself aggrieved by a decree, he may make the petition within the preemptory period of ten useful days from the legitimate notification of the decree.

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68 Ibidem.

Extraordinary exaction by its very nature should be understood as the voluntary offerings of clerics as their contribution for a specific diocesan purpose.

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