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Income Tax—Charitable Deductions—Propaganda and Influencing Legislation

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son decision should not have a controlling effect. For that which the legislature gives, the legislature can take away or modify, and the problem becomes simply one of statutory interpretation. However, a substantially different and much more difficult question arises in those states, as in Montana, where the right to vote cumulatively has been conferred by constitutional provision.[80] In Illinois, the constitutional provision was adopted as a result of public indignation over the excesses of corporate directors, and the court in the *Wolfson* case based its opinion, in large part, on the fact that cumulative voting was adopted in Illinois as an expression of strong public policy. The courts of the states with similar constitutional provisions, if and when the question arises, will have to probe into and examine the history behind the adoption of their constitutional provisions, and if they find, as the Illinois court did, that their provision arose as a result of strong public policy and was designed to guarantee minority representation on corporate boards, the *Wolfson* decision should become controlling. If, on the other hand, the courts find that the provision was adopted merely with the idea of providing the right to vote cumulatively, then they would be justified in either following or disregarding the *Wolfson* decision.

It is difficult to determine what stand the Montana Supreme Court would take in deciding the question posed by the *Wolfson* case. Its decision would involve two factors: First, a determination of the public policy the constitutional convention intended to embody in the constitutional provision; and second, a consideration of the relative merits of the two theories. It is doubtful that history will reveal the intent of the constitutional convention.[81] Therefore the decision would probably be based upon the merits of the two theories, coupled, of course, with whatever evidence may be available of the intent of the convention.

DOUGLAS P. BEIGHLE

INCOME TAX—CHARITABLE DEDUCTIONS—PROPAGANDA AND INFLUENCING LEGISLATION—During the years 1946 to 1949, petitioners had deducted severally and jointly in their Federal Income Tax returns contributions made in those years to the Hamilton County Good Government League, incorporated as a non-profit corporation to provide an opportunity for discussion of matters of civic importance and to advance good government. It had neither contributed to, nor affiliated with any political party, but had urged its members to vote and to support legislation that was for the public good. In addition, committee members of the League were *personally* responsible for making studies of necessary legislation to effect public purposes, and for making endorsements of political candidates to the League, but these activities involved no expenditure of League funds. Less then five per cent of the time and effort of the League was found to be of a political nature. The Tax Court disallowed deductions to the League under

[80]Wright v. Central Calif. Colony Water Co., 67 Cal. 532, 8 Pac. 70 (1885).

[81]For an interesting discussion of the possible intent of the Montana Constitutional Convention when they adopted this provision, and dealing specifically with the question of non-voting stock in Montana, see Note, 1 MONTANA L. REV. 60 (1940).

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sections 23(*o*)(2) and 101(6) of the Internal Revenue Code of 1939.[1] On appeal to the Court of Appeals, Sixth Circuit, *held,* reversed. A devotion of less than five per cent of the time and effort of an organization to political activities is not a substantial part of its activities within section 23(*o*)(2) and contributions to such an organization may be deductible. *Seasongood v. Commissioner,* 227 F.2d 907 (6th Cir. 1955).

> Section 23 of the Internal Revenue Code of 1939 provides:
> *Deductions from gross income.* In computing net income there shall be allowed as deductions:
>
> . . . .
>
> (1) *Charitable and other contributions.*—In the case of an individual, contributions or gifts payment of which is made within the taxable year to or for the use of:
>
> . . . .
>
> (2) A corporation, trust, or community chest, fund or foundation, created or organized in the U.S. or in any possession thereof or under the law of the U.S. or of any State or Territory or of any possession of the U.S., *organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals,* no part of the net earnings of which inures to the benefit of any private shareholder or individual, *and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation.*[2] (Emphasis added.)

The problem presented in the instant case evolved from the interpretations of section 23(*o*)(2) relating to deductions from gross income based upon charitable and other deductions. This section was derived from the Revenue Act of 1921[3] which in turn had as its basis section G of the Revenue Act of 1913.[4] The only major change in these sections was made by the addition in the 1934 Internal Revenue Act[5] of the words "no substantial part of the activities of which is carrying on propagonda, or otherwise attempting, to influence legislation." These words present the crux of the problem in the instant case.

In one of the earlier cases cited before the Board of Tax Appeals,[6] the decision of the court turned upon an interpretation of the word "exclusive," and a very strict and narrow interpretation of the word was given. Following this case a 1928 decision of the Tax Board[7] indicated what it believed was meant by the term "educational"; that "educational" *definitely did not* in-

[1]Murray Seasongood, 22 T.C. 671 (1954).

[2]Internal Revenue Code of 1939, § 23(*o*)(2), 53 STAT. 880 (now INT. REV. CODE OF 1954 § 170(c)(2)). Similar wording is found in § 2055(a)(2) of the 1954 Code, which allows deductions for transfers for public, charitable and religious uses.

[3]Revenue Act of 1921, § 214, 42 STAT. 241.

[4]38 STAT. 172 (now INT. REV. CODE OF 1954 § 501(c)(3)). This section established tax exempt organizations.

[5]Revenue Act of 1934, § 23(*o*)(2), 48 STAT. 690.

[6]Bert R. McReynolds, 1 B.T.A. 815 (1925). The Bloomington Consistory Ancient and Accepted Scottish Rule claimed to be a religious organization, basing that contention on the fact that prayers are said, that the members are taught and required to believe in God and in the immortaliy of the soul, and that the purpose of the Order was to make men better. It was declared not organized and operated exclusively for religious and charitable purposes.

[7]Joseph M. Price, 12 B.T.A. 1186 (1928).

clude anything concerning the government or legislative activities. Although in form this case was upheld in the following year,[8] Judge Learned Hand, in writing the opinion, expressed his regrets to the American Birth Control League, whose activities, it was held, were not exclusively charitable. Hand brought out the inescapable fact that there are many charitable, literary, educational, and scientific ventures that, as an incident to their success, require changes in the law, and that because of these minor activities the prerequisite of exclusiveness is not met, with the result that such organizations are barred under this particular section of the Code. In a very convincing manner it was pointed out how a society for the prevention of cruelty to children and animals needs the positive support of the law to achieve its objectives, yet if it were to obtain legislation for these purposes it would be excluded as a tax exempt corporation although it is expressly included in the section. Then, too, consider state universities which are supposedly exclusively educational institutions. Are they not constantly trying to get appropriations from the legislature? Should we exclude them from this section as not being exclusively educational? This question was summarily handled in a 1932 case in which the court took judicial notice that a university was organized and operated exclusively for educational purposes.[9] In a 1929 decision involving a charitable corporation[10] the court stated that "the general or predominant purpose was to be considered and that the other features were only a means to an end." Is it possible to reconcile these conflicting views that interpret the same section of the Internal Revenue Code?

The epitome of the conflict may have been reached in a 1932 court of appeals decision[11] wherein a legacy to be expended for teaching, expounding, and propagating the idea of Henry George was held deductible, as "exclusively for educational purposes," yet in the same case a legacy to a club incorporated to advocate the Henry George doctrine was held *not* deductible as the club was not organized exclusively for educational purposes. This position may have been somewhat clarified in the same year when the Board of Tax Appeals held that an organization tends to be political rather than educational when the term "advocate" comes into use.[12] But if this were so, why then, in 1935 did a court of appeals hold that the World League Against Alcoholism was "exclusively educational" in its activities?[13] There was no argument there that the League was *not* an advocate against alcoholism although it was well recognized that their main purpose was to advocate the extinction of alcoholism.

[8]Slee v. Commissioner. 42 F.2d 184 (2d Cir. 1930). The taxpayer's contributions to the American Birth Control League were held not deductible from his gross income.

[9]Porter v. Commissioner, 60 F.2d 673 (2d Cir. 1932).

[10]John R. Sibley, 16 B.T.A. 915 (1929).

[11]Leubuscher v. Commissioner, 54 F.2d 998 (2d Cir. 1932). The doctrines of Henry George dealing with the single tax on land values and international free trade are set forth in his book, *Progress and Poverty*.

[12]John H. Watson, Jr., 27 B.T.A. 463 (1932). A contribution to the Citizens League of Cleveland was held not deductible because the activities of such organization went beyond the scope of education and entered the field of advocacy.

[13]Cochran v. Commissioner, 78 F.2d 176 (4th Cir. 1935). The decision is predicated upon the theory that alcoholism is not in itself controversial, hence everyone would advocate the elimination of it.

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A new basis for the court's decision was relied upon in the early 1940's, when, in a case involving the Birth Control League of Massachusetts,[14] the court pointed out the reason for section 23(*o*)(2) of the Internal Revenue Code stating that it was enacted from a motive of public policy to encourage charitable gifts and that therefore the sections should be liberally construed in favor of the taxpayer." A liberal construction was further adopted in a case the following year wherein a Board of Temperance of the Methodist Church was allowed deductibility although one of their objectives was to promote the speedy enactment of legislation pertaining to liquor traffic.[15]

The majority of the court in the instant case, in contrast to the foregoing decisions, based its conclusion on the nebulous term "substantial," holding that five per cent of the activities was *not* substantial. Continuity of interpretation would require a similar holding if a case arose in which an organization twenty times as large as the one involved devoted five per cent of the activities to the influencing of legislation. This would amount to saying that the smaller organization, if incorporated into the larger, could devote 100 per cent of its activities to influencing legislation and still be tax exempt, yet this per cent most certainly would be considered substantial if the smaller organization were independent. Although the decision in the case is desirable, the means of reaching that decision were incongruous in light of the hypothetical situation posed. The same decision could and should have been reached by considering whether the league was engaged in activities constituting propaganda, or otherwise attempting to influence legislation, within the meaning of those terms in the Code provision.

Had the League been attempting to carry out the technique of the "Big Lie," which characterizes propaganda, or had they been lobbying or pressuring politicians into passing certain laws, which is synonymous with influencing legislation, then the question could have been asked: Were these activities substantial? But the facts clearly indicate that under the practical, limited definitions of those terms as set forth above, the League was not even engaged in the activities that the Code section provides against. Nevertheless, the tax court and the court of appeals seemed determined to be guided by the term "political activities" in construing the section. This term universally has a far wider scope than that inhering in the terms "propaganda" and "influencing legislation" and it seems logical to assume that the framers of the code, in drafting this particular provision, would have used the words "political activities" had they intended such a broad restriction.

Section 23(*o*)(2) will inevitably produce many analogous cases, but if the intent of the legislators is to be carried out, a proper limitation of the restrictive terms will have to be observed. By giving precise definitions to the vague words involved, and incorporating these into the regulations periodically distributed as a supplement to the Code, the Bureau of Internal Revenue would do much to facilitate and promote a standard of consistency in the interpretation of this controversial Code section.

RONALD W. LABUFF

[14]Faulkner v. Commissioner, 112 F.2d 987 (1st Cir. 1940). A contribution to the Birth Control League of Massachusetts was held deductible.

[15]Girard Trust Company v. Commissioner, 122 F.2d 108 (3rd Cir. 1941).