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"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."—OLIVE WENDELL HOLMES, COLLECTED LEGAL PAPERS (1920) 269.

Recent Cases

FEDERAL TAXATION—INCOME TAX—DEDUCTIONS—GIFTS TO ORGANIZATIONS ATTEMPTING TO INFLUENCE LEGISLATION.

*Seasongood v. Commissioner of Internal Revenue*¹

This case appears to apply a more liberal interpretation as to when an organization is carrying on activities which are substantially "propaganda or other-

1. 227 F.2d 907 (6th Cir. 1955).

wise attempting to influence legislation," so that a gift to it would be disallowed as a deduction to a charitable organization under Sections 23 (o) (2) and 101 (6) of the Internal Revenue Code of 1939,² and Section 170 (c) (2) (D) of the 1954 Revenue Act.³

The question is: If the taxpayer makes a contribution to a charitable, religious, scientific, literary or educational organization and the donee organization is carrying on activities which may influence legislation, can he take a deduction?

Petitioner (taxpayer), Murry Seasongood and wife, had taken a deduction in their individual income tax return for 1946 and 1947, and their joint return for 1948 and 1949 for contributions made to the Hamilton County Good Government League. Taxpayers claimed a deduction under Sections 23 (o) (2) and 101 (6)

2. Section 101 (6) is identical to Section 23 (o) (2) of the Revenue Act of 1939.

Section 23. Deductions from gross income. "In computing net income there shall be allowed as deduction:

"(o) (As amended by Section 224 (a) of the Revenue Act of 1939, c. 247, 53 STAT. 862) 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 United States or in any possession thereof or under the law of the United States or of any State or Territory or of any possession of the United States, 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; . . ."

3. Section 170 (c) (2) (D) of the Revenue Act of 1954 (26 U.S.C.A. 170) is: Section 170. Charitable, Etc., Contributions and Gifts.

"There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year."

"(c) For purposes of this section the term 'charitable contribution' means a contribution or gift to or for the use of—"

"(a) A corporation, trust, or community chest, fund, or foundation—
 (A) created or organized in the United States or in any possession thereof, or under the law of the United States, any State or Territory, the District of Columbia, or any possession of the United States;
 (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes or for the prevention of cruelty to children or animals;
 (C) no part of the net earnings of which inures to the benefit of any private shareholder or individual; and
 (D) no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation."

of the Internal Revenue Code of 1939. The deduction was disallowed by the Tax Court,⁴ but allowed by the United States Court of Appeals, Sixth Circuit, on appeal. The Good Government League was organized in 1934 and incorporated in 1941 as a non-profit organization. The League's Articles of Incorporation specified its object to be "to provide an opportunity for discussion of matters of civic importance and to advance good government". Its main activities were operating a "Forum of the Air" to permit public discussion of community problems, the preparation and distribution of literature on public health, and to encourage voting. The League did endorse candidates for public office and sponsored or opposed legislation through contacts with legislative authorities.

The Tax Court found the League was devoted at all times to the public interest, but it also felt the League's endorsement of candidates for political office, and the sponsorship or opposition of legislation by personal contacts with legislators made the League's activities substantially political even though they constituted something less than five percent of the time and effort of the League.⁵

In reversing the Tax Court, the court in the principal case considered the meaning of the term "propaganda or otherwise attempting to influence legislation". The court could not agree as to a definition of the term "propaganda"⁶ but in trying to determine what is meant by "otherwise attempting to influence legislation" the opinion indicates the court believes that unless something in the record indicates lobbying, influence peddling or illegal or unethical pressures upon the legislature, then it is not an attempt to influence legislation.

The language "and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation" first appeared in the Revenue Act of 1934.⁷ It was added as an amendment in the Senate.⁸ In the original Senate amendment the wording was "and no substantial part of the activities of which is participation in partisan politics or is carrying on propaganda, or otherwise attempting to influence legislation".⁹ The debate over this amendment seems to indicate that the Committee on Finance, in drafting the amendment, intended to avoid allowance of deductions where the organization was attempting to propagandize and influence legislation, particularly where the con-

4. 22 T.C. 671, CCH Dec. 20, 421 (1954).

5. The contacts with legislative authorities did not involve expenditures of the League's funds, but rather consisted of personal work on the part of individual members of the League.

6. Chief Judge Simons adopts the view that the term connotes public address or ulterior purpose and is characterized by the coloring of facts, while his colleagues on the court believe that it is any scheme for enlightening people concerning politics or other matters. 227 F.2d 907, at page 911 (6th Cir. 1955).

7. 3 CCH 1934 FED. TAX SERV. ¶ 5177.

8. It was added as Senate amendment number nineteen to H.R. 7835, 78 CONG. REC. 5861 (1934).

9. *Ibid.*

tribution was a selfish one made to advance the interest of the giver of the money.¹⁰

The words "participation in partisan politics or is" were deleted by the House and Senate Conference Committee, which considered the amendments to the bill, because of the fear that this prohibition was too broad.¹¹ This would lend support to the idea that congress did not intend to include within this provision all charitable or other organizations which carry on activities which may

10. In considering the Senate amendments made to H.R. 7835, the House Revenue Bill of 1934, Senator David Reed of Pennsylvania, a member of the Committee on Finance, objected in reference to amendment number nineteen, that the amendment as worded "would apply to the Society for the Prevention of Cruelty to Children, to the Society for the Prevention of Cruelty to Animals, or any of the worthy institutions that we do not in the slightest mean to affect". Senator Pat Harrison of Mississippi, chairman of the Committee on Finance, replied that it was the sentiment of the committee that the provision should apply to any organization that was receiving contributions, the proceeds of which were used for propaganda or to try to influence legislation. He stated further that, "It will affect some war organizations, but personally I see no difference between one organization that might be on one side of the fence getting contributions to propagandize and influence legislation and being permitted to proceed without interference, while at the same time preventing one that might have a different viewpoint from receiving or making use of contributions for the same purpose." Senator Reed replied, "I have no objection whatever and no disagreement with the Senator in regard to what we were trying to do by this amendment. There is no reason in the world why a contribution made to the National Economy League should be deductible as if it were a charitable contribution if it is a selfish one made to advance personal interests of the giver of the money. That is what the committee were trying to reach; but we found great difficulty in phrasing the amendment. I do not reproach the draftsmen. I think we gave them an impossible task; but this amendment goes much further than the committee intended to go." Senator Couzens asked: "Does not the Senator believe that the word 'substantial part' will exclude the tuberculosis societies and the children's welfare societies? Certainly a substantial part of their income is not devoted to propagandizing for legislation." Senator Reed answered: "I am not so sure. Take the case of those who are urging the adoption of the child-labor amendment. Certainly they are not acting from selfish motives, and yet almost their entire activity is an effort to influence legislation".

The amendment was then passed over for the present. When it was considered again Senator Harrison stated that the "attention of the Senate committee was called to the fact that there are certain organizations which are receiving contributions in order to influence legislation and carry on propaganda. The committee thought there ought to be an amendment in the bill". Senator Reed replied, "I do not think the committee is proud of the language in which this amendment is couched. I know the legislative drafting counsel who drew it expressed no pride whatever in their product, but I agree with the Senator from Michigan (Senator Couzens) that if the amendment shall be agreed to we will have from now until the conference to study the subject and prepare better phraseology".

The amendment was not discussed on the Senate floor again, but with the minor change made by the House and Senate Conference Committee (noted above in article) was accepted by both houses of congress. 78 CONG. REC. 5861 and 5959 (1934).

11. 78 CONG. REC., conference report at p. 7815, report on amendment nineteen at p. 7831 (1934).

eventually influence legislation by attempting to enlighten people concerning good government or other matters, as in the principal case.¹²

The courts seem to have had as much difficulty in determining the meaning of this section as congress did in drafting it. The cases are in conflict. Many of the cases arose under revenue acts which did not contain the express provision, although the Commissioner attempted to impose a similar requirement by a treasury regulation.¹³ Therefore, these cases aid in finding the meaning of this language. In a leading case of *Slee v. Commissioner of Internal Revenue*,¹⁴ a deduction was denied because the American Birth Control League had the declared object in its Articles of Incorporation of enlisting the support and co-operation of legislators.¹⁵ Deductions were also denied where a civic organization advocated legislation to bring about good civic government,¹⁶ recommended candidates and where its agents appeared before legislative bodies,¹⁷ and where the organization drafted bills and urged their adoption before the legislature.¹⁸ However, deductions were allowed where the organization sponsored bills in the legislature because legislation was deemed to be incidental to the purpose of the organization.¹⁹

12. The legislative history herein cited would seem to lend support to Judge Simons' view that "propaganda" in this section connotes public address with selfish or ulterior purpose and not any concerted group, effort, or movement to spread a particular doctrine or system of doctrines or principles, as viewed by his colleagues on the court. The court states, however, that they were cited to no legislative history on the matter.

13. TREAS. REG. 80, promulgated under the Revenue Act of 1926, as noted in footnote one of *Girard Trust Co. v. Comm'r of Int. Rev.*, 112 F.2d 108 (3rd Cir. 1941).

14. 42 F.2d 184 (2d Cir. 1930).

15. Also in *Henriette T. Noyes v. Comm'r of Int. Rev.*, 31 B.T.A. 121 (1934), where the organization's Certificate of Incorporation listed as its purpose to "foster education in citizenship and support needed legislation," the deduction was denied. But there was a deduction allowed in *Cochran v. Comm'r of Int. Rev.*, 78 F.2d 176 (4th Cir. 1934) (reversing 30 B.T.A. 1115 (1934)) where the World League Against Alcoholism's constitution contained a provision that the object of the League was to suppress alcoholism by means of education and legislation, but the court was influenced by the fact that the League had no legislative program at all or did not make any appearances before any legislative bodies. In *Faulkner v. Comm'r of Int. Rev.*, 112 F.2d 987 (1st Cir. 1940), a case arising under the amended language, a statement in the Birth Control League of Massachusetts' constitution that it would enlist the support of legislators to repeal certain laws did not cause the contribution to be denied. The court found that the League had abandoned its objective at the time of the contribution.

16. *Joseph M. Price v. Comm'r of Int. Rev.*, 27 B.T.A. 463 (1930). The contribution was to the Citizens League of Cleveland and the greater part of its activities consisted of encouraging better local and state government.

17. *Henriette T. Noyes v. Comm'r of Int. Rev.*, 31 B.T.A. 121 (1934). A contribution to the National League of Women Voters. The League also supported or opposed specific measures of legislation.

18. *Vanderbilt v. Comm'r of Int. Rev.*, 93 F.2d 360 (1st Cir. 1937). Bequest to the National Women's Party whose purpose was to secure equal rights for women. Its activities were held to be political and not educational.

19. *Old Colony Trust Co. v. Welch*, 25 F. Supp. 45 (D. Mass. 1938).

where a Methodist Temperance Board sought to promote legislation to suppress liquor traffic,²⁰ and in a case in which the organization gave lectures and made a wide distribution of pamphlets.²¹ These cases clearly point out that in cases arising under acts prior to the 1934 Revenue Act, the courts had held both ways as to allowing a deduction where the organization carried on activities as the League did in the principal case, or sought legislation to effectuate its program.

In the cases arising under revenue acts since 1934 the cases show a clearer pattern of consistency. In the case of *Luther Ely Smith v. Commissioner of Internal Revenue*,²² a deduction was allowed where a contribution was made to the Missouri Institute for Administration of Justice. This was an organization incorporated to secure an amendment to the Missouri State Constitution with respect to a method of selecting judges to certain state courts. The Institute circulated petitions throughout the state, broadcast radio speeches and was responsible for the wide distribution of literature explaining and supporting the plan. The court based its decision on the fact that the Institute was exclusively an educational body since it was not engaged in lobbying of any kind before a legislative body and no legislation was needed to effectuate its plan, but rather it contemplated an amendment to the constitution to be voted upon by the people in a general election and becoming operative without the necessity of any action on the part of the legislature. In contrast, in *Mosby Hotel Co. v. Commissioner of Internal Revenue*,²³ a deduction was disallowed where the contribution was to an organization seeking to bring about the repeal of prohibition in Kansas by a constitutional amendment, but where after the constitutional amendment was adopted it would still necessitate legislation to be passed.²⁴ Then in *McClintock-Trunkey v. Commissioner of Internal Revenue*,²⁵ a contribution to the Good Roads Association, whose purpose was to foster good farm-to-market roads, was denied because officers of the Association testified before legislative committees.²⁶

It thus appears that, after addition of the words "and otherwise attempt to influence legislation," if the recipient organization made *any* appearance before a legislative body in behalf of its legislative program or such program required legislation to be ultimately achieved it would be found to be within the provision

20. *Girard Trust Co. v. Comm'r of Int. Rev.*, 122 F.2d 108 (3rd Cir. 1941). The court felt that this was the type of activity that had long been regarded by the Methodist Church as religious.

21. *Weyl v. Comm'r of Int. Rev.*, 48 F.2d 811 (2d Cir. 1931) (reversing 18 B.T.A. 1092 (1930)). The court found the League for Industrial Democracy an educational corporation rather than political.

22. 3 T.C. 696 (1944).

23. P-H Memo. T.C. ¶ 54,288 (1954).

24. The deduction was disallowed under Section 23 (q) (2) as lobbying.

25. 19 T.C. 297 (1952) reversed by 217 F.2d 329 (9th Cir. 1954) because the Tax Court was inconsistent in holding that a profit sharing plan need not contain a definite formula for determining contributions on the one hand, and its holding that since there was a plan it was binding.

26. Also disallowed under Section 23 (q) (2) as lobbying.

and the deduction disallowed. In the principal case, as pointed out by the Tax Court, the Hamilton County Good Government League had an extensive legislative program and an active election machinery committee. Its members also made appearances before legislative bodies. By finding that these activities were not such as to be substantial the court would seem to apply a more liberal interpretation to this section than heretofore applied. It indicates that some appearances before legislative bodies and the having of an active legislative program will not necessarily be activities that are substantial within the meaning of this section.

In one respect the opinion is not satisfactory because the court arrives at the apparent meaning Congress intended by their amendment to the section, and then finds an additional way to reverse the Tax Court without squarely coming to grips with the problem. After stating that the method of influencing legislation must be considered, and that "there is nothing in the finding of fact that either challenges validity, the good faith purpose, or any untoward result in communication addressed by the League either to its members, public opinion generally, or to legislative or administrative officers", and that there was nothing in the record to indicate lobbying or any unethical pressures upon the legislators, the court then said:

"In any event we still think the Commissioner's determination erroneous. Seasongood testified that something less than 5% of the time and effort of the League was devoted to the activities that the Tax Court found to be 'political'. In view of the rule, that this remedial statute must be liberally construed to effect its purpose, and in view of the fact that Seasongood's evidence was not successfully challenged either by adversary witnesses or destructive analysis, we conclude that the so-called 'political activities' of the League were not in relation to all of its other activities substantial, within the meaning of the section."

The court ought to have adopted Chief Judge Simons' view of "propaganda"²⁷ and followed their well reasoned interpretation of "influencing legislation" instead of stating that they did not think, in any event, that the activities in question were not substantial, within the meaning of the section. This is no help to the taxpayer who is trying to determine when an organization that he has contributed to has carried on activities that are "propaganda or otherwise attempting to influence legislation", and when, if they are, they will become substantial within the meaning of the section.

Yet the court still arrived at a more liberal view than any of the prior decisions since the addition of the amendment. The court allowed a deduction where the donee organization had a broad public information program to promote better civic government, made appearances before a legislative body, had a legislative program it sought enacted, and endorsed candidates for political office, and these activities were still not considered a "substantial part of the activities of which is carrying or propaganda or otherwise attempting to influence legislation".

C. ROBERT HINES

27. See note 6, *supra*.

