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The Taxation of Ideology

WILLIAM J. LEHRFELD*

This article is principally about tax exempt organizations, with emphasis on the historical treatment of organizations engaged in ardent (and, in the case of the Communist Party, sometimes illegal) causes. Its purpose is to put into perspective the reactions of the processes of government which foster or hinder these causes through interpretation and enforcement of various provisions of the Internal Revenue Code. The Code grants income tax exemption to a wide variety of public and private nonprofit organizations.¹ Some organizations serve only the purposes of their members and receive only income tax exemption while others, having a greater commitment to public service, receive additional benefits. Thus, privately controlled mutual organizations, such as country clubs and credit unions, pay no federal income tax on their earnings.² Educational, charitable, religious and like organizations are not only exempt from income tax, but are eligible to receive gifts and bequests which are deductible by their donors when they compute their income, gift or estate taxes.³ In addition, such organizations are not liable for social security and employment taxes.⁴

Organizations with causes to propagate seek the expanded benefits of the "educational" or "charitable" classification to promote donations and an improved financial condition. Initial contact of any claimant seeking the preferred status is through the application and private rulings process administered by the Internal Revenue Service. Under long-standing regulations, all claimants of exempt status, regardless of classification, are advised that before exemption (and, for some, deductible status) is established, the organization must demonstrate that its purposes and activities comport with the statutory requirements.⁵ If the organization makes a proper show-

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1. INT. REV. CODE of 1954, § 501.

2. *Id.* § 501(c)(7), (14)(A).

3. *Id.* §§ 170, 2522, 2055.

4. *Id.* §§ 3121(b)(8)(B), 3306(c)(8).

5. Compare Regulations 33, revised, Art. 67, T.D. 2690, 20 TREAS. DEC. INT. REV. 127, 172-73 (1918) with Treas. Reg. § 1-501(a)-1(a) (1958).

ing, it will receive a private letter ruling recognizing the exempt status. If it fails to meet the tests prescribed, the organization is advised of the Service's contrary opinion and advised of its appeal rights, both administrative and judicial. Some organizations which claim "educational" or "charitable" status may be denied recognition under that classification and granted exemption as a "social welfare" organization or "civic league,"⁶ a status which is not eligible for tax deductible contributions. Even though an organization qualified through the private rulings process for tax exempt status, the Revenue Service may revoke the private ruling for lack of continued conformity to the provisions governing exemption.⁷ Revocation of the ruling may be either prospective or retroactive, depending upon the circumstances.

The Tax Act of 1894,⁸ the predecessor of the present-day Internal Revenue Code, contained exemptions for

corporations, companies, or associations organized and conducted solely for charitable, religious, or educational purposes, including fraternal beneficiary societies, orders, or associations operating [under] the lodge system and providing for the payment of life, sick, accident, and other benefits to the members of such societies, orders, or associations and dependents of such members.⁹

Following the invalidation of the 1894 Act by the Supreme Court¹⁰ the Excise Tax Act of 1909, as a corporate excise tax, again provided organizational exemptions from the modest tax imposed upon corporate business enterprises.¹¹ Ratification of the 16th amendment brought the 1913 Income Tax Act,¹² and the exemptions for nonprofit organizations accorded under the 1913 Act were simply carried over from the 1909 Act.¹³ The 1913 Act precipitated a flood of taxpayer queries, and apparently the Internal Revenue Bureau attempted to answer all questions.¹⁴ Almost as soon as the exemption provisions were added to the tax laws, administrative

6. INT. REV. CODE of 1954, § 501(c)(4).

7. Rev. Proc. 69-3, 1969-1 CUM. BULL. 16, 18.

8. Ch. 349, 28 Stat. 509.

9. *Id.* at 556.

10. *Pollock v. Farmers' Loan & Trust Co.*, 157 U.S. 429, *aff'd on rehearing*, 158 U.S. 601 (1895).

11. Ch. 6, § 38, 36 Stat. 112-17.

12. Ch. 16, § 2, 38 Stat. 166.

13. See Eliasberg, *Charity and Commerce: Section 501(c)(3)—How Much Unrelated Business Activity?* 21 TAX L. REV. 53, 55 (1965). Most of the debate on the terms or phrases used to describe the classes of exempt organizations occurred during the Senate debate on the 1909 Act. See, e.g., 44 CONG. REC. 4148-49 (1909).

14. See Caplin, *Taxpayer Rulings Policy of the Internal Revenue Service: A Statement of Principles*, N.Y.U. 20TH INST. ON FED. TAXATION 1 (1962).

judgments were being rendered on problems posed by politics and ideology in a tax exempt setting.¹⁵

Evidently in response to internal rulings problems, regulations which first attempted to define "education" introduced the concept of "controversial or partisan propaganda," the dissemination of which would not entitle an organization to educational status.¹⁶ Organizations were advised that: "associations formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute."¹⁷ No counterpart of such a standard was promulgated for delimiting charitable, literary or religious purposes, but as the case law developed, the standard was extended to all such classifications. The Bureau readily admitted that the educational standard was broader than the teacher-pupil relationship,¹⁸ and even permitted economic interests to color the judgment of the educator.¹⁹ In amplifying its regulation, the Bureau's Solicitor sought to distinguish organizations which were partisan on noncontroversial issues, deemed allowable, and those whose advocacy on one side of an issue involved some public controversy:

The prime purpose of education is to benefit the individual

It is a matter of common knowledge that propaganda in the popular sense is disseminated not primarily to benefit the individual at whom it is directed, but to accomplish the purpose or purposes of the person instigating it.²⁰

Application of such an ingenuous standard permitted allowance of exemption to advocates of prevailing opinions and denial of exemption to dissenters. The rule of overdog was prevalent. Allowance of educational status to those who argued for protectionism²¹ and national defense²² seemed to represent the early policy of the Bureau.²³ An unpopular group, such as the American Association for Labor Reform, arguing for better and fairer legislative standards for labor, was deemed a propaganda outlet.²⁴

15. Cf. H. BLACK, A TREATISE ON FEDERAL TAXES § 117 (1919), with specific reference to T.D. 2090, 16 TREAS. DEC. INT. REV. 259 (1914).

16. Regulations 45, § 517, T.D. 3146, 23 TREAS. DEC. INT. REV. 352, 490 (1921).

17. *Id.* The sentence quoted in the text appeared without substantial change in Article 517 of Regulations 62, T.D. 3295, 24 TREAS. DEC. INT. REV. 207, 360-61 (1922), Regulations 65, T.D. 3640, 26 TREAS. DEC. INT. REV. 745, 896-97 (1924), and Regulations 69, T.D. 3922, 28 TREAS. DEC. INT. REV. 558, 715-16 (1926); and then in Article 527 of Regulations 74 and 77 and Article 101(6)-1 of Regulations 86 and 94. Query: Did the Bureau believe there could be noncontroversial or nonpartisan propaganda?

18. See S. 1176, 1 CUM. BULL. 147, 148 (1919).

19. I.T. 1882, II-2 CUM. BULL. 201 (1923) (allowing a bar association to qualify as educational). *But see* G.C.M. 4805, VII-2 CUM. BULL. 58 (1928).

20. S. 1362, 2 CUM. BULL. 152, 154 (1920).

21. S. 455, Aug. 28, 1918 (unpublished).

22. S. 992, 1 CUM. BULL. 145 (1919).

23. *But see* O.D. 44, 1 CUM. BULL. 150 (1919).

24. S. 1362, 2 CUM. BULL. 152 (1920). This published ruling is evidently based on an unfavorable private ruling issued to the American Association for Labor Reform in 1919.

Favorable rulings had to assume there was no direct and intentional political activity comprehended as part of the educational design. The unfavorable holding cast its rule in the finding of a legislative purpose brooding over the labor reform activity. Disallowing exempt status for political activity of educational organizations probably represented an extension of the limitation first placed in the business deduction provision of the tax laws to prevent insidious influences upon the Congress.²⁵ In formulating its anti-politics rule, the Bureau had to purposefully ignore a majority rule established in many states that a charitable trust purporting to educate the public retained its character as such despite political ends or use of political means.

State Interpretations and the Massachusetts Minority

Litigation in state courts generally represented contests between heirs of the deceased and the trustees of the "charitable" trust, the former seeking for themselves the capital bequeathed with the latter seeking to perpetuate the desires of the testator as expressed in his will. Charitable trusts avoid the perpetuities problems and it was accepted that charitable trusts included the species which were educational.²⁶ The minority rule against politics is best exemplified by *Jackson v. Phillips*,²⁷ where a Massachusetts court considered several "sentimental" trusts with one being found charitable and one noncharitable. Under the will of Mr. Phillips, a trust to create public sentiment against slavery and reform of the Fugitive Slave Law was deemed charitable while another, aimed at equalizing the treatment of women, was not a charity. The court justified the distinction on the ground that laws involving slavery would change as a result of the newly created public sentiment and not through the trustees, while in the case of women's suffrage, the trustees were expected to have a more proximate nexus with the political processes.²⁸ Unless one blindly exalts form over substance, there is no distinction between prompting legislation by awakening public sentiment and prompting legislation by direct legislative contacts. The ultimate success of either trust rested in part on lawfully sanctioning the equalities sought. Obviously, both purposes needed favorable sentiment; otherwise, legislation would never have been feasible. So dubious was the decision that only

25. See T.D. 2137, 17 TREAS. DEC. INT. REV. 48, 57-58 (1915); Regulations 33 (revised), Art. 143, T.D. 2690, 20 TREAS. DEC. INT. REV. 126, 197 (1918). See also *Textile Mills Sec. Corp. v. Commissioner*, 314 U.S. 326 (1941); *Harden Mortgage Loan Co. v. Commissioner*, 137 F.2d 282 (10th Cir.), cert. denied, 320 U.S. 791 (1943); *Rugel v. Commissioner*, 127 F.2d 393 (8th Cir. 1942).

26. See, e.g., *Peth v. Spear*, 63 Wash. 291, 115 P. 164 (1911).

27. 96 Mass. (14 Allen) 539 (1867).

28. *Id.* at 571.

Massachusetts held fast to the view.²⁹ What may have perpetuated one trust over the other was the fact that, at the time, the status quo in Massachusetts would not be affected by anti-slavery sentiment but would be if suffragettes created sentiment in favor of equal treatment for women.³⁰

Other states found substantial reasons to sustain trusts for charitable purposes where political means were contemplated or involved in accomplishing the purpose of the testator:

We are led to conclude that a trust for a public charity is not invalid merely because it contemplates the procuring of such changes in existing laws as the donor deems beneficial to the people in general, or to a class for whose benefit the trust is created. To hold [otherwise] . . . would discourage improvement in legislation and tend to compel us to continue indefinitely to live under laws designed for an entirely different state of society. Such view is opposed to every principle of our government based on the theory that it is a government "of the people, by the people, and for the people," and fails to recognize the right of those who make the laws to change them at their pleasure, when circumstances may seem to require.³¹

The inherent inconsistency of *Jackson v. Phillips* was shown by other courts when they upheld trusts engaged in agitation for women's suffrage,³² promotion of government efficiency and reform,³³ propagation of socialism,³⁴ spreading the light on the single tax theory for land,³⁵ prevention of racial discrimination,³⁶ and abolition of liquor traffic,³⁷ to create, in effect, a majority rule maintaining charitable trusts having a political flavor.

If we presume, consistent with authority, that organized groups seeking to effect changes in law to bring medical, economic, and social justice, are serving the needs of the community, as they see such needs,³⁸ then such

29. Mr. Phillips' son and daughter continued their efforts to fund trusts for women's suffrage, with only modest success. *Bowditch v. Attorney Gen.*, 241 Mass. 168, 134 N.E. 796 (1922); *Bacon v. Ransom*, 139 Mass. 117, 29 N.E. 473 (1885).

30. See *Bowditch v. Attorney Gen.*, 241 Mass. 168, 169, 134 N.E. 796, 798-99 (1922).

31. *Taylor v. Hoag*, 273 Pa. 194, 199-200, 116 A. 826, 827-28 (1922).

32. *Garrison v. Little*, 75 Ill. App. 402 (1892).

33. *Collier v. Lindley*, 203 Cal. 641, 266 P. 526 (1928); *Taylor v. Hoag*, 273 Pa. 194, 116 A. 826 (1922).

34. *In re Cahan's Estate*, 122 N.Y.S.2d 716 (Sur. Ct. 1953); *Peth v. Spear*, 63 Wash. 291, 115 P. 164 (1911).

35. *Broeker v. Ware*, 27 Del. Ch. 8, 29 A.2d 591 (Ch. 1942); *Ross v. Freeman*, 21 Del. Ch. 44, 180 A. 527 (Ch. 1935); *George v. Braddock*, 45 N.J. Eq. 757, 18 A. 881 (Ct. Err. & App. 1889).

36. *In re Lewis' Estate*, 152 Pa. 477, 25 A. 878 (1893).

37. *Haines v. Allen*, 78 Ind. 100, 41 Am. R. 555 (1881); *Buell v. Gardner*, 83 Misc. 513, 144 N.Y.S. 945 (Sup. Ct. Eq. 1914); *Harrington v. Pier*, 105 Wis. 485, 82 N.W. 345 (1900); Annot., 73 A.L.R. 1361 (1931).

38. See notes 32-37, *supra*; G. BOGERT, TRUSTS AND TRUSTEES §§ 378, 379 (2d ed.

service, pursued lawfully though zealously and even against opposition, is consistent with the classic definitions of charity.³⁹ Stimulating debate and discussion, propagating new ideas, challenging static social and economic concepts and pursuing their success over those in force or favor is an integral part of the role of political parties. Because political parties tend to stabilize society by providing channels for fruitful ideas, it would not be unreasonable to characterize parties as public charities. Indeed, while there is authority to the contrary,⁴⁰ such a characterization would not represent a radical departure from traditional concepts of American charity. Even in such an extreme case as the ideology of the Communist Party, there is some inclination to permit the promotion of its concepts of democracy under the mantle of charity or education.⁴¹

Federal courts need not countenance state construction of words and phrases when construing federal statutes.⁴² Even if a state opined that a political party was a charity (for perpetuity purposes), it is extremely doubtful a federal court would do likewise, unless construing a state statute.⁴³ For

1964); IV SCOTT ON TRUSTS § 374.6 (2d ed. 1956); RESTATEMENT OF TRUSTS § 374 (1935).

39. It was *Jackson v. Phillips*, 96 Mass. (14 Allen) 539 (1867), which gave the charity a broad reading including a "gift . . . for the benefit of an indefinite number of persons . . . by relieving their bodies from . . . constraint." *Id.* at 556. Such constraint need not be physical but mental such as static social, economic or political doctrines. 14 C.J.S. *Charities* § 1 (1939). A charity does include "advancement of the public good," *id.* § 1c, as well as the aid of governmental purposes, *id.* § 13.

40. *See, e.g., In re Grossman's Estate*, 75 N.Y.S.2d 335 (Sur. Ct. 1947); *In re Andrejevich's Estate*, 57 N.Y.S.2d 86 (Sur. Ct. 1945); *In re Deichelmann's Estate*, 21 Pa. D.&C.2d 659 (Montgomery County Ct. 1959); *In re Boorse Trust*, 64 Pa. D.&C. 447 (Montgomery County Ct. 1948). *Cf. Workman's Circle Educ. Center, Inc. v. Board of Assessors*, 314 Mass. 616, 51 N.E.2d 313 (1943); *In re Liapis Estate*, 88 Pa. D.&C. 303 (Lawrence County Ct. 1954). The decisions, involving the Socialist Labor Party and affiliates, reflect the reluctance of courts to be sensitive to ideals antagonistic to prevailing mores. Such antagonism evidences itself in the "rule of law" that hostility to prevailing religion, law or morals is grounds for illegalizing a charitable trust. *See In re Mealy's Estate*, 91 Cal. App. 2d 371, 204 P.2d 971 (1949); 10 AM. JUR. *Charities* § 67 (1937).

41. *In re Mealy's Estate*, 91 Cal. App. 2d 371, 204 P.2d 971 (1949), characterized the publisher of the West Coast version of the *Daily Worker*, the Pacific Publishing Foundation, Inc., as being of the same substance as nonprofit corporations. It is understood that the Foundation had been denied Section 101(6) status on May 19, 1943 by the Bureau on the grounds of "substantial" legislative activity. *See also In re Robbins*, 21 Cal. Rptr. 797, 371 P.2d 573 (Sup. Ct. 1962) where a trust for the benefit of the children of Smith Act "victims" was found to be charitable.

42. *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967). Under the present regulations dealing with tax exempt organizations, the Commissioner seems to commit himself to following decisions of a state court construing such terms as charitable, educational, and religious. *Treas. Reg. § 1.501(c)(3)-1(b)(5)* (1959). State courts tend to reject federal findings of charitable purpose made in the private rulings procedure. *See, e.g., County of Douglas v. OEA Senior Citizens, Inc.*, 172 Neb. 696, 111 N.W.2d 719 (1961).

43. *See Rules of Decision Act*, 28 U.S.C. § 1652 (1964); *Erie R.R. v. Tompkins*, 304 U.S. 64 (1938).

a federal court, a charity may not be a charity when other people's money is involved. That is, a government subsidy through tax exemption or donor deductions is as significant a funding of the purpose as a direct contribution and both involve a cost sharing by the entire tax paying populace.⁴⁴ It may be this cost sharing factor which tended to cause federal courts to be less sensitive than state courts to the causes of ardent persons.⁴⁵

Two considerations were involved in these federal tax controversies: first, was the organization educational, either in its methodology or its ultimate purpose; and second, was there involvement in political processes, either actual or contemplated, sufficiently significant to declass the otherwise bona fide claimant from the preferred status? As the ground rules developed, the Government regularly modified its administrative regulations broadening the definition of education in an attempt to impart some sense out of the ongoing conflict so that, in approximately 1934, the rulings policy of the Bureau was liberalized in its traditional opposition to partisanship and controversy. It was during this "liberal" period that many organizations, later determined to be subversive, first qualified for exempt status.

The Jurisprudence of Education

From 1924 forward, the jurisprudence of education developed on a divergent basis with the newly formed Board of Tax Appeals⁴⁶ taking negative positions and the Circuit Court of Appeals having a more benign attitude. Whether the litigation over tax exemption and deductible contributions resulted from adverse private rulings of the Bureau, or whether the organizations chose to ignore the rulings process,⁴⁷ is not clear from many opinions.

The early decisions of the Board of Tax Appeals tended to rest on the failure of counsel to produce adequate evidence on the purpose of the organiza-

44. *Murray v. Comptroller*, 241 Md. 383, 392, 216 A.2d 897, 906, *cert. denied*, 385 U.S. 816 (1966):

Indubitably, religious organizations benefit from the exception. Economically, they are in the same position as though they paid taxes to the city and state and then received back the amounts paid in the form of direct grants. Moreover, members of the general public pay higher taxes than they would if the exemptions were not in effect; the same amount of revenue must be raised and, by reason of the exemption, the rate paid by non-exempt taxpayers is higher.

45. For example, the state courts regularly found that propagating the principles of Henry George was charitable (*see* note 35, *supra*) while the federal courts were not convinced. *Frederick C. Leubuscher*, 21 B.T.A. 1022 (1930), *modified*, 54 F.2d 988 (2d Cir. 1932).

46. Revenue Act of 1924, ch. 234, § 900, 43 Stat. 253, 336.

47. In its own inimitable style, the Board of Tax Appeals actively discouraged the idea of obtaining rulings on exempt status by holding that such rulings were not binding upon succeeding Commissioners. *Agricultural Fair Ass'n*, 40 B.T.A. 549 (1939); *Stanford Univ. Bookstore*, 29 B.T.A. 1280 (1934), *aff'd*, 83 F.2d 710 (D.C. Cir. 1936); *James Couzens*, 11 B.T.A. 1040 (1928).

tion. Thus, a contribution to the League to Enforce Peace was disallowed because the Board would not "take judicial notice of the nature of the organization merely from the names of prominent individuals who sponsored it."⁴⁸ Such organizations as the North American Civic League for Immigrants, the International Reform Bureau, the Scientific Temperance Federation and the Massachusetts Anti-Saloon League were dismissed by the Board as entities formed simply "to disseminate controversial or partisan propaganda" and were not educational.⁴⁹ The Reform Bureau was far more of an activist than the others because it was intimately involved in the legislative and campaign processes. The Anti-Saloon League had some legislative activity and the Scientific Temperance Federation had no political activity whatsoever. The distinction, if any, between these organizations and the American School Citizenship League, earlier found to be educational,⁵⁰ was that the temperance and immigration groups had an admittedly predetermined point of view which apparently colored their judgment. The Citizenship League, on the other hand, while organized to promote, in part, "a responsible world democracy and a real cooperation among nations" succeeded in promoting the relatively noncontroversial concepts of "American citizenship."⁵¹

The distinction between politics and education first emerged in a decision involving the Civic Fund of the City Club of New York. There the Board tended to preach a "principal purpose" test for education, indicating that even if the methodology was educational, "advocacy of or opposition to candidates and proposed municipal measures carries [the organization] beyond the exclusively educational purposes."⁵² Informing the public, even by fair presentation of pertinent facts on legislation or candidates, was declared noneducational. Similarly, if the viewpoint of the organization on a particular subject could be accomplished only by repealing or enacting legislation, the organization failed to meet the "principal purpose" of being

48. *Sophia G. Coxe*, 5 B.T.A. 261, 263 (1926) (contribution deduction claimed for 1919 under § 214(a)(11), Revenue Act of 1918). Cf. *Ellen Nevins*, 1 B.T.A. 1162 (1925) where contribution was disallowed for failure to prove that a "committee" of the Knights of Columbus was a "corporation" within the meaning of § 214(a)(11), Revenue Act of 1918. The League to Enforce Peace later qualified for charitable status under a private ruling issued June 4, 1919. The ruling was cancelled October 17, 1921. The World Peace Foundation, an organization which allied itself with the League's principles, was found to be charitable in the midst of the Great War. *Parkhurst v. Burrill*, 228 Mass. 196, 117 N.E. 39 (1917).

49. *Herbert E. Fales*, 9 B.T.A. 828, 832 (1927).

50. *Rose D. Forbes*, 7 B.T.A. 209, *acquiesced in*, VI-2 CUM. BULL. 3 (1927).

51. *Id.* 7 B.T.A. at 210.

52. *Joseph M. Price*, 12 B.T.A. 1186, 1189 (1928). See also *Montgomery v. United States*, 63 Ct. Cl. 588 (1927), where the Court of Claims denied educational status to the American Institute of Accountants, in part because its efforts to influence legislation "to safeguard the interests of public accountants" were "clearly incompatible with the spirit and purpose of the exempting statute." *Id.* at 592.

educational.⁵³ The involvement of the pamphleteer in political processes overrode any proper method utilized to alert or awaken the citizenry to the problems which faced them.

The battle for status quo continued with the celebrated decision involving the American Birth Control League.⁵⁴ Margaret Sanger's husband made a determined effort to qualify the organization as charitable, educational and scientific by proving the worth of the works which the clinics were performing in aiding mothers and potential mothers on the physiologic and hygienic problems attendant in prolific procreation. The Board found birth control to be pregnant with controversy and efforts aimed at enlightening mothers and lawmakers on the political, social and economic considerations were deemed "propaganda." Consistent with the earlier definition of propaganda, we are thereby instructed that birth control accomplished "only the purpose of the person . . . instigating it."⁵⁵ Obviously, planned parenthood served only Margaret Sanger's purposes and did not "benefit the individual." In its coup de grace, the Board also found that because some activities were found to be illegal under Massachusetts law, the organization, by conducting unlawful acts against the interests of the Commonwealth, was not exclusively charitable or educational.

Prior to the affirmation of this decision by the Second Circuit, the Board ruled on the status of such organizations as the League for Industrial Democracy,⁵⁶ Survey Associates,⁵⁷ and the Pennsylvania League of Women Voters.⁵⁸ The League for Industrial Democracy was interested in seeing that public ownership of property prevailed. It sought to educate "a new social order based on production for use and not for profit."⁵⁹ Even though the organization apparently proved it presented facts on both sides of various issues, a seemingly proper method of education, the subject matter was deemed "political." Manifesting its fear of new ideas, the Board observed:

In its campaign for this "new social order" the League advocated drastic political and economic changes which are directly at odds with existing economic theories and practices upon which society is founded in this country and which pervade our system of Government, and it is hardly to be presumed that Congress intended to foster such institutions by including them within the classification of

53. Joseph M. Price, 12 B.T.A. 1186 (1928).

54. J. Noah H. Slee, 15 B.T.A. 710 (1929), *aff'd*, 42 F.2d 184 (2d Cir. 1930).

55. S. 1362, 2 CUM. BULL 152, 154 (1920).

56. Bertha Poole Weyl, 18 B.T.A. 1092 (1930), *rev'd* 48 F.2d 811 (2d Cir. 1931).

57. Robert W. DeForest, 19 B.T.A. 595, *acquiesced in* IX-2 CUM. BULL. 15 (1930).

58. Charles W. Dahlinger, 20 B.T.A. 176 (1930), *not acquiesced in*, X-1 CUM. BULL. 77, *aff'd on other grounds*, 51 F.2d 662 (3d Cir), *cert. denied*, 284 U.S. 673 (1931).

59. Bertha Poole Weyl, 18 B.T.A. 1092 (1930).

institutions which are encouraged as a matter of public policy and as "aids of good government."⁶⁰

The viewpoint precisely paralleled that of the Bureau:

[I]t was Congress' intention, when providing for the deduction of contributions to educational corporations, not to benefit and assist the aims of one class against another, not to encourage the dissemination of ideas in support of one doctrine as opposed to another, to the profit of one class and to the detriment perhaps of another, but to foster education in its true and broadest sense, thereby advancing the interest of all, over the objection of none.⁶¹

The *Survey* and *Survey Associates* were journals in the field of education and public health where, except for birth control, there was apparently little objection or controversy, so they qualified as educational. In its effort to chill the enthusiasm of activists using "education" as a cover, the Board permitted this entity to make presentations on "controversial" matters so long as it offered no solutions: "Usually the activities . . . are noncontroversial in character, but when the subject under consideration may be liable to any character of controversy, both sides of the question are presented, the object being to present fairly all available facts with regard thereto . . . and without an attempt to urge a particular solution of the problem."⁶²

It is hard to believe that journals founded by Jane Addams and continued by her disciples normally "failed to urge a particular solution" of social problems within their interest. Shortly thereafter, a state affiliate of the League of Women Voters was found to be educational since "it endeavors to present . . . facts for and against each issue, so that the women may vote intelligently on these matters." Furthermore, "[i]t does not attempt to aid any party or candidate."⁶³ The opinions in these cases suggested a rule that to be a tax exempt educational organization, a group must refrain from controversy, allay predetermined viewpoints, place all available facts within the acuity of the audience, and, in sum, avoid offending the prevailing dogmas. Indeed, it was only the meek who inherited the exemption.

Learned and Ardent Persons

At this juncture the various Courts of Appeals began their review of the Board's decisions. The Second Circuit, in *Slee v. Commissioner*,⁶⁴ upheld the Board in denying a charitable contribution to the Birth Control League. Ap-

60. *Id.* at 1094.

61. S. 1362, 2 CUM. BULL. 152, 154 (1920).

62. Robert W. DeForest, 19 B.T.A. 595, 598 (1930).

63. Charles W. Dahlinger, 20 B.T.A. 176, 177 (1930).

64. 42 F.2d 184 (2d Cir. 1930).

parently reading a close parallel to the business deduction denial, Learned Hand wrote that the federal fisc must not finance agitation.⁶⁵ His opinion is the keystone of the traditional nonsubvention pose of Treasury where the ends of any group are to be achieved through legislation. His secondary proposition, that when ardent persons organize to secure a more general acceptance of their beliefs, their campaign in proper context is not educational or charitable, is suspect. He seemed to contradict outstanding rulings of the Bureau during the depression period which recognized ardent, albeit noncontroversial, causes as exemptable.⁶⁶ Political action, like dialectics, does not serve its own purpose; rather, it is no more than a means to an end. The Birth Control League, which sought to promote hygiene, marital privacy and an understanding of the gravity of overpopulation was stymied by interdicting legislation. Removal of the legislative barrier did not or would not secure the cause;

65. This raises the only question which seems to us important, which is, whether the League is also agitating for the repeal of laws preventing birth control. . . . *Political agitation as such is outside the statute, however innocent the aim, though it adds nothing to dub it "propaganda," a polemical word used to decry the publicity of the other side. Controversies of that sort must be conducted without public subvention; the Treasury stands aside from them. . . .*

So far as the society at bar sought to relieve itself of the restraints of law in order the better to conduct its charity, we might indeed hold that it fell within the [exemption]. So far, however, as its political activities were general, it seems to us, regardless of how much we might be in sympathy with them, that its purposes cannot be said to be "exclusively" charitable, educational or scientific. . . . [W]hen people organize to secure the more general acceptance of beliefs which they think beneficial to the community at large, it is common enough to say that the public must be "educated" to their views. . . . [B]ut it would be a perversion to stretch the meaning of the statute to such cases; they are indistinguishable from societies to promote or defeat prohibition, to adhere to the League of Nations, to increase the Navy, or any other of the many causes in which ardent persons engage.

Id. at 185. (Emphasis added).

66. If persons organize to awaken "public sentiment" on the need to rehabilitate convicts, I.T. 2088, III-2 CUM. BULL. 220 (1924), or to secure and enforce game conservation laws, I.T. 2546, IX-2 CUM. BULL. 122 (1930), they are exempt. Compare I.T. 2267, V-1 CUM. BULL. 84 (1926), *modified*, G.C.M. 11705, XII-1 CUM. BULL. 57 (1933) allowing exemption to organizations which encourage youths to join military service camps. One encouraging note was that the American Committee for the Outlawry of War qualified as "charitable" in a private ruling on September 25, 1926. Gun lovers such as the National Rifle Association, who wished to "foster an interest" in the use of firearms were deemed educators, G.C.M. 443, V-2 CUM. BULL. 66 (1926). Cf. *Hazen v. National Rifle Ass'n*, 101 F.2d 432 (D.C. Cir. 1938); *National Rifle Ass'n v. Young*, 134 F.2d 524 (D.C. Cir. 1943); G.C.M. 24100, 1944 CUM. BULL. 192 unclassing NRA as educational, but holding it a "social welfare" group. The most interesting aspect is that the Bureau itself evidently rejected Hand's formulation when it held that the American Birth Control League and the Birth Control League of Massachusetts were charitable and educational in private rulings of March 2, 1938 and March 4, 1938, after a showing that they had abandoned legislative work or overtures. See, e.g., *Faulkner v. Commissioner*, 112 F.2d 987, 990 n.2 (1st Cir. 1940).

it would merely permit the process of education to continue in a less hostile environment.

Evidently buoyed by the *Slee* affirmation, the Board continued to stifle deductible dissent, but with decidedly less anti-intellectual overtones. The Robert Schalkenbach Foundation and the Manhattan Single Tax Club were found to have no educational purpose in their methods of propagating the ideas of Henry George.⁶⁷ In his 1876 book *Progress and Poverty*, Mr. George quite candidly argued for a totally new approach to the tax structures of America to overcome social and economic maladies then plaguing the post Civil War period. His program called for repeal of existing tax laws and their replacement by a single tax on the increment of rising land values. The Foundation was committed to "teach and propagate" this doctrine of a single tax while the Club was to "advocate" it. In fairly moderate tones, the Board recognized that the degree of controversy inherent in any doctrine was not a proper criterion for determining educational status; the "power to engage in legislative and other noneducational operations," however, suffices to deprive the contributor his deduction.⁶⁸

Curiously enough, this case seemed to represent a turning point for both the Bureau and the courts. After *Slee*, panels of the Second Circuit seemed allergic to the Hand formulation of educational purpose and reversed the Board as to the status of the League for Industrial Democracy and the Schalkenbach Foundation.⁶⁹ The thesis was that if the material disseminated was "of interest and information to students of political subjects and political economy," that was all that education demanded.⁷⁰ Education is the process not only of instruction but of the full development of the intellect by any normal methodology. Regardless of the definite "social doctrine" espoused by the group, if its propagation enlivens the human experience, it is educational. Thus, "[t]he fact that its aim may or may not resemble that of a political party does not of itself remove it from the category of an association engaged in educational work."⁷¹ So long as no legislative program "hovers" over the activities, and presumably in a nonelection year, no campaign activity, dissemination of opinion even reflecting a predetermined

67. Frederic C. Leubuscher, 21 B.T.A. 1022 (1930), *modified*, 54 F.2d 998 (2d Cir. 1932).

68. *Id.* 21 B.T.A. at 1030.

69. *Weyl v. Commissioner*, 48 F.2d 811 (2d Cir. 1931) (League for Industrial Democracy); *Leubuscher v. Commissioner*, 54 F.2d 998 (2d Cir. 1932) (Robert Schalkenbach Foundation). In a private ruling of May 2, 1940, the Bureau, evidently in response to the *Leubuscher* case, held exempt as educational the Public Ownership League of America whose ideology (and lack of activism) apparently paralleled that of the League for Industrial Democracy.

70. *Weyl v. Commissioner*, 48 F.2d 811, 812 (2d Cir. 1931).

71. *Id.*

point of view would not unclass the organization. Should any gathering seek to "teach, expound and propagate" a social, economic or political philosophy through debates, lectures and discussions, it will be classed as educational and entitled to exemption. It would seem, then, even if the ultimate purpose of the organization could only be secured by legislation, that an educational classification would be available for a proper methodology, presuming no significant intrusion of actual political activity. Following this thesis, an affiliate of the American Birth Control League was found to be educational along with the World League Against Alcoholism by several circuits, overturning Board decisions to the contrary.⁷² Where religious premises were introduced, there was even greater latitude permitted in the extent to which the zealots could maneuver in the political arena.⁷³ Permitting religious boards to so intrude was regarded by one jurist, however, as placing God on the side of the heaviest moneybags.⁷⁴

On the other hand, where political contacts and influence were prevalent in the actions of members and officers who were attempting to secure their reforms through political campaigns or legislation, the Board was upheld.⁷⁵ While there prevailed among the circuits a distinct lack of consistency in the degree of actual or contemplated political activity needed to overturn an educational association, appellants tended on the whole to be more successful before the circuits than the Board of Tax Appeals.⁷⁶ Congress seemed

72. See, e.g., *Faulkner v. Commissioner*, 41 B.T.A. 875, *rev'd*, 112 F.2d 987 (1st Cir. 1940); *Cochran v. Commissioner*, 30 B.T.A. 1115 (1934), *rev'd*, 78 F.2d 176 (4th Cir. 1935).

73. *Girard Trust Co. v. Commissioner*, 41 B.T.A. 157 (1940), *rev'd*, 122 F.2d 108 (3d Cir. 1941).

74. *Id.* 122 F.2d at 114 (Clark, J., dissenting). Cf. Letter from Colin Stam, Chief of Staff, Joint Committee on Internal Revenue Taxation to Harry S. Byrd, Chairman, Senate Finance Committee, 110 CONG. REC. 5078 (1964) (legislative activity of the National Council of Churches during the pendency of the 1964 Civil Rights Act).

Where the zealot was an atheist or humanist, the benign attitude wilted. See, e.g., *Old Colony Trust Co. v. Welch*, 25 F. Supp. 45 (D. Mass. 1938), denying estate tax deduction for bequest to Freethinkers of America.

75. The National Women's Party was denied favored status in *Vanderbilt v. Commissioner*, 34 B.T.A. 1033 (1936), *aff'd*, 93 F.2d 360 (1st Cir. 1937). In later years, the National Women's Party had evidently forsaken politics to such a degree that a state court found it to be a charitable organization under the Maryland inheritance tax law. *Register of Wills v. Cook*, 241 Md. 264, 216 A.2d 542 (1966).

76. The Board continued to deny deductions (or exempt status, where applicable) where there was any connection with political activity. *Henriette T. Noyes*, 31 B.T.A. 121 (1934) (contribution to National League of Women Voters); *Alfred A. Cook*, 30 B.T.A. 292 (1934) (contribution to Association of the Bar of the City of New York); *James J. Forstall*, 29 B.T.A. 428 (1933) (contribution to League of Nations Association of Illinois, Inc.); *John H. Watson, Jr.*, 27 B.T.A. 463 (1932) (contribution to Citizens League of Cleveland). Of the cited entries, only the League of Nations Association and its state affiliates later managed to purify themselves to qualify for a favorable Section 101(6) status in a private Bureau ruling of October 22, 1941.

unsatisfied by the anomalous results and tried its hand at settling the controversies when the Bureau's ruling process became too liberal.

Private Rulings and Political Legislation

In 1934, the tax laws were amended to limit legislative activity of charitable and educational organizations.⁷⁷ Unrequested by the Treasury Department, the Senate Finance Committee appended the provision to the Revenue Act of 1934 without making any statement in its report as to the needs or purpose of the limitation. As the amendment was originally drafted, it would have denied exemption for participation in partisan politics or substantial legislative activities.⁷⁸ When the tax bill reached the Senate floor for debate, it appeared that the sponsor of the amendment, Senator Reed, was seeking to curb a maverick organization known as the National Economy League. This particular organization had just begun enjoying the fruits of tax exemption and deductible contributions by the issuance, on November 2, 1933, of a favorable private ruling under Section 103(6) of the Revenue Act of 1932.

The debates indicated that Senator Reed, ranking minority member of the Finance Committee, wanted the Committee staff to draw an amendment which would only unclass the National Economy League and not the Society for the Prevention of Cruelty to Children, both of which engaged in legislative activity. He stated that the Committee did not wish to affect "any of the worthy institutions."⁷⁹ It was his view, "[t]here is no reason in the world why a contribution made to the National Economy League should be deductible I do not reproach the draftsmen [for being all inclusive] . . . but this amendment goes much further than the committee intended to go."⁸⁰ Senator LaFollette wanted to do away with the tax provisions which granted privileges to charitable and educational organizations. He chastised his colleagues for presuming that the Internal Revenue Bureau could ascertain or differentiate between education and propaganda: "It is my judgment that we never shall get away from mistakes of administration and from decisions which may seem like favoritism until all contributions to organizations of this kind are made subject to the income tax."⁸¹ The amendment was passed

77. Revenue Act of 1934, ch. 277, §§ 23(o)(2), 101(6), 406, and 517, 48 Stat. 680, 690, 700, 755, 760.

78. 78 CONG. REC. 5861, 7831 (1934).

79. *Id.* at 5861.

80. *Id.*

81. *Id.* at 5959.

by the Senate and, after modification by the joint House-Senate conference on the bill, became law.⁸²

In the overview, the antipolitics amendment served only to introduce additional confusion as to what constituted an "educational" or "charitable" purpose. Almost without exception, organizations hustling for their causes or cures found themselves continuously accused of ultimate legislative intentions and denied exemption or deductions based upon the 1934 limitation.⁸³ Although Congress' thrust seemed aimed at actual, not proposed, activity which was substantial in nature, the limitation was apparently extended by the Bureau in its private rulings process to limit status where the ultimate goal of the group could be realized only through legislation.⁸⁴

The legislation proscription has really only been successfully invoked against the League of Women Voters⁸⁵ and associations of doctors.⁸⁶ The lack of any published ground rules, in fact the refusal even to acknowledge whether or not the standard is quantitative or qualitative or both, has substantially eroded any confidence which the courts might have in applying the clause to an activist organization.⁸⁷ Indeed, it is not entirely free from doubt that the political limitation is constitutional in its obvious chilling of the rights

82. On July 25, 1934, less than three months after the effective date of the Revenue Act of 1934, the private ruling letter to the League was cancelled.

83. See Note, *The Revenue Code and a Charity's Politics*, 73 YALE L.J. 661 (1964) discussing treatment of the Fellowship of Reconciliation. There, the Internal Revenue Service held that since peace could only be obtained by influencing legislation, exempt status should be revoked. The exempt status was later restored. Because organizations do not lose their income tax exemption under Section 501(a), INT. REV. CODE of 1954 for legislative activity, merely shifting over to the social welfare classification, none of the cases decided on the legislation clause were suits for refunds for income taxes. The litigation included challenges as to deductions for income taxes, estate taxes, gift taxes, and social security taxes. See, e.g., *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955) (contributions); *Martha H. Davis*, 22 T.C. 1091 (1954) (gift taxes); *Luther Ely Smith*, 3 T.C. 696 (1944) (contributions); *Estate of Sharpe*, 3 T.C. 612 (1944) (estate taxes); *Bureau of Jewish Employment Problems v. United States* (D. Ill. Oct. 5, 1954) (unemployment taxes).

84. The 1959 regulations to be used for 1954 Code years discuss the clause in terms of the concept of "action organizations." Treas. Reg. § 1.501(c)(3)-1(c)(3) (1959). No attempt is made to mediate the problem of "substantial part," what are the "activities," the effect of the term propaganda, etc. See Clark, *The Limitation on Political Activities: A Discordant Note in the Law of Charities*, 46 VA. L. REV. 439, 451 (1960).

85. E.g., *Kuper v. Commissioner*, 332 F.2d 562 (3d Cir. 1964); *League of Women Voters v. United States*, 180 F. Supp. 379 (Ct. Cl. 1960); cf. *Liberty Nat'l Bank & Trust Co. v. United States*, 122 F. Supp. 759 (W.D. Ky. 1954). *Contra*, *Luther Ely Smith*, 3 T.C. 696 (1944). For preclause years, see Charles W. Dahlinger, 20 B.T.A. 176 (1930) and Florence G. Withey, No. 62939 (B.T.A., Jan. 20, 1933).

86. E.g., *Hammerstein v. Kelley*, 349 F.2d 928 (8th Cir. 1965); *Krohn v. United States*, 246 F. Supp. 341 (D. Colo. 1965).

87. For suggested distinctions of the quantum approach, see REPORT OF THE SPECIAL COMM. TO INVESTIGATE TAX-EXEMPT FOUNDATIONS AND COMPARABLE ORGANIZATIONS, H.R. REP. No. 2681, 83d Cong., 2d Sess. 95-96 (1954).

which organizations have to petition the Congress for redress of group grievances.⁸⁸

Communism and Tax Exemption

Many organizations later charged with subversive tendencies moved through the private rulings process to secure a letter from the Deputy Commissioner, or other official, to the effect that the organization qualified for tax exemption. Government records indicate the first communist ideologue to qualify, the American Society for Cultural Relations with Russia, Inc., was granted a favorable ruling on February 5, 1930, under Section 103(6) of the Revenue Act of 1928. The exact nature of the entity at that time is not known since its public information file has been destroyed.⁸⁹

The propriety of tax exemption for subversives first surfaced in remarks by Martin Dies, the then Chairman of the Special Committee on Un-American Activities in 1942.⁹⁰ In seeking to rebut challenges to the usefulness of his committee, Dies cited an "Attorney General's List" which named twelve organizations which he alleged had been branded "Communist controlled." Several of these organizations had already qualified for exemption in private rulings and others would do so shortly.⁹¹ As part of his attack, Congressman Dies charged that the Robert Marshall Foundation, a New York corporation, was the principal financial supporter of these groups.⁹² The Foundation represented the incorporation of several trusts which the late Robert Marshall

88. See *National Council on Facts of Overpopulation v. Caplin*, 224 F. Supp. 313 (D.D.C. 1963). See also *Cammarano v. United States*, 358 U.S. 498 (1959). In *Cammarano*, the Supreme Court observed the parallel of the Section 162 regulations which denied a business expense deduction for lobbying and the statutory limitation imposed upon charities, and the deductibility of contributions to them. The premise for faulting the challenge to the constitutionality of the Section 162 regulations was that "every-one in the community should stand on the same footing [deduction-wise]," *id.* at 513. That premise is obsolete since 1962 (see Section 162(e)), so there may yet be a successful constitutional argument against denying educational and charitable institutions the same rights of deduction for lobbying now enjoyed by business.

89. Under the Technical Amendments Act of 1958, Pub. L. No. 85-866, § 75(a), 72 Stat. 1606, 1660 applications of organizations which at any time qualified for tax exemption as an organization described in INT. REV. CODE of 1954, §§ 501(c)(1) to (17), or predecessor sections, are available for viewing by the public in Washington, D.C. See Lehrfeld & Webster, *Administration by the IRS of Non-Profit Organization Tax Matters*, 21 TAX LAW. 591, 610-12 (1967); Treas. Reg. § 301.6104-1(a) (1958).

90. 88 CONG. REC. 7441-58 (1942).

91. Among the organizations alleged to be subversive by Chairman Dies were the American League Against War and Fascism (a/k/a American League for Peace and Democracy), American Youth Congress, and the League of American Writers, each of which had qualified for tax exempt status prior to Sept. 24, 1942. See Appendix pp. 72-73 *infra*. The National Negro Congress qualified after the Dies denunciation, on June 18, 1943, as did the National Federation for Constitutional Liberties in a private ruling on Jan. 21, 1944 as a social welfare organization.

92. 88 CONG. REC. 7449-52 (1942).

had established by his will to carry on economic research ("production for use and not for profit") and civil liberties activities. Due to a peculiarity of the estate tax deduction laws, the 1939 Code could not be used to counter specifically the purported legislative activities of the trusts where the executors claimed a charitable deduction.⁹³ The Government fell back upon the *Slee* formulation against political agitation which the Tax Court and the Second Circuit upheld.⁹⁴ One can read the opinions of the courts without detecting whatsoever any argument by the Government as to denial of the estate tax deduction on portentous un-Americanism. Despite the charges of subversive activity and financing of alleged Communist affiliates, the Bureau issued a favorable private ruling to the Foundation during the pendency of the litigation, holding that the Foundation qualified as a social welfare organization, but was not eligible for deductible contributions. In 1948, the private ruling was summarily revoked.

It is noteworthy that after the enactment of the legislation clause in 1934, "educational" organizations with but one exception did not have their status challenged except upon that provision. This may be attributable to the fact that the liberal rulings policy of the Government simply permitted ideologues to qualify if they were not politically active or ardent persons and their causes had lost their ardor for combat.⁹⁵ The exception involved the prospect of validating the subversive test for declassing an organization. The Foundation for World Government was formed during the Truman era to conduct a vast public educational campaign in the principles of "world government." The Commissioner disallowed the donor of one million dollars a gift tax deduction. In a decision not reviewed by the entire Tax Court,⁹⁶ Judge Raum

93. Under the Internal Revenue Code of 1939, ch. 3, § 812(d), 53 Stat. 124-25, bequests to religious or charitable corporations were tax exempt provided that the organizations did not carry on substantial propaganda or lobbying activities. However, bequests to trustees were not subject to this provision, an omission rectified by the Revenue Act of 1942, ch. 619, § 409, 56 Stat. 949-50.

94. *Estate of Marshall v. Commissioner*, 2 T.C. 1048 (1943), *aff'd*, 147 F.2d 75 (2d Cir. 1945). Three months later, the Second Circuit allowed the social welfare exemption for a radio station, WEVD, organized to promote the "dissemination of liberal and progressive social views" related obviously to socialism, notwithstanding the station sold commercial advertising time. *Debs Memorial Radio Fund, Inc. v. Commissioner*, 3 T.C. 949 (1944), *rev'd*, 148 F.2d 948 (2d Cir. 1945).

95. The liberalization of the private ruling standards was evidenced by an amendment to the "educational" regulations published in Regulations 101 (applicable to the Revenue Act of 1938), dated February 8, 1939 as part of Section 101(6)-1:

[T]he publication of books and the giving of lectures advocating a cause of a controversial nature shall not of itself be sufficient to deny an organization the exemption, if carrying on propaganda, or otherwise attempting to influence legislation form no substantial part of its activities, its principal purpose and substantially all of its activities being clearly of a nonpartisan, noncontroversial and educational nature.

96. *Estate of Anita McCormick Blaine*, 22 T.C. 1195 (1954).

found that while, on the surface, the grants, studies, lectures, research program, and publications were educational, it was all for the attainment of a political objective. No evidence was presented that there was any direct campaign activity or actual "attempts to influence legislation." Relying upon *Slee*, the Judge found that though the methodology was apparently proper, striving for such an objective was not furthering an educational purpose.⁹⁷ The Government also argued there were "subversive" characters receiving grants which tainted the Foundation. The court resisted the opportunity to divine the subversity of the recipients of grants although it did permit the introduction of "some evidence" over the "vigorous objection" of the Foundation.⁹⁸

The Attorney General's List

In 1947, to counter accusations of softness against communism directed toward his administration by Parnell Thomas and his Un-American Activities Committee,⁹⁹ President Truman issued a sweeping executive order designed to sanitize Washington.¹⁰⁰ Through the vehicle of a Department of Justice investigation, organizations would be designated as totalitarian, fascist, subversive, etc., and affiliation with such groups would represent grounds for dismissal from government service. The first list, as prepared by the Justice Department, was made public March 20, 1948.¹⁰¹ Before then, however, the list obviously had been circulating through government since summary revocations of exempt status had been begun as early as February 27, 1947, for tax exempt organizations listed thereon. As additions were later made to the Attorney General's List, revocations were processed.¹⁰² In a news release of February 4, 1948, Commissioner of Internal Revenue Schoeneman observed simply: "The tax laws do not contemplate and it has never been our policy to grant tax exemption or other tax privileges to subversive organizations."¹⁰³ The Commissioner did not elaborate on the term

97. *Id.* at 1213. Organizations having similar goals, but more sublime in their statement of purposes had earlier qualified for charitable and educational status by private rulings. For example, Federal Union qualified under Section 101(6) on August 12, 1943, and the Union for Democratic Action first qualified under Section 101(8) on May 22, 1942 and its "educational fund" qualified under Section 101(6) on February 4, 1944.

98. The Foundation, denied tax-exempt status in a private ruling of Aug. 27, 1951 under Section 101(6), later received a favorable ruling under Section 101(8) in a letter of December 12, 1952. This ruling, despite the allegations of subversity, was never disturbed.

99. See W. GOODMAN, *THE COMMITTEE 194-95* (1968); E. LATHAM, *THE COMMUNIST CONTROVERSY IN WASHINGTON* 362-68 (1966).

100. Exec. Order No. 9,835, 3 C.F.R. § 129 (Supp. 1947).

101. 13 Fed. Reg. 1471 (1948).

102. See Appendix, pp. 72-73 *infra*.

103. 1948 CCH Income Tax Serv. ¶ 6075. In Joseph Morgenstern, 14 CCH Tax Ct.

"subversive" for purposes of the tax code. The Government issued no published ruling or regulation formally grafting this interpretation of the Code to the administration procedures for private ruling.

None of the organizations listed in the Appendix challenged their loss of tax status. Their privacy may have been more important than all the tax considerations combined.¹⁰⁴ Donors were not enchanted with the idea of publicly identifying themselves with these subversive organizations.¹⁰⁵ As a consequence, there has been no true test of the federal administrative position.

Congressional Action

Even while purgation of the tax rolls continued administratively, Congress stepped into specify in what fashion communist controlled and affiliated organizations were to be stripped of their tax privileges. As one aspect of the Subversive Activities Control Act of 1950,¹⁰⁶ Congress provided that an organization under a final order to register with the Subversive Activities Control Board as a communist group is not entitled to tax exemption or eligible to receive deductible contributions.¹⁰⁷ The statute did not operate retroactively. Although there are final orders outstanding against certain communist groups,¹⁰⁸ but not the Communist Party,¹⁰⁹ neither the Subversive Activities Control Board nor the Internal Revenue Service has ever promulgated

Mem. 282 (1955) the status of the organizations involved was questioned when the deductibility of contributions to it were denied for 1946-48. The Tax Court opinion of Judge Opper makes no mention of the organization's listing on the Attorney General's List. Contributions evidently were allowed for the years in dispute.

104. Several "suspect" organizations did litigate aspects of the tax consequences inherent in soliciting money for their causes, but they were never exempt and did not claim to be before the Tax Court. *See, e.g.*, National Comm. to Secure Justice in the Rosenberg Case, 27 T.C. 837 (1957); Bail Fund of the Civil Rights Congress of New York, 26 T.C. 482 (1956).

105. The Government recognized early the benefits accorded the administrators of the tax laws in their statutory permission to obtain financial data. In 1950, Congressman Buchanan sought information on the finances of the Civil Rights Congress, a listed entity representing the merger of at least one previously exempt organization, and its executive secretary refused to produce data on contributors. *See Hearings Before the House Select Comm. on Lobbying Activities*, 81st Cong., 2d Sess. Part 9 (1950). His refusal to provide data triggered a contempt action which was overturned, *United States v. Patterson*, 206 F.2d 433 (D.C. Cir. 1953). In later tax-centered proceedings, the Government similarly failed. *In re Patterson*, 125 F. Supp. 881 (S.D.N.Y. 1954), *rev'd sub nom.*, *United States v. Patterson*, 219 F.2d 659 (2d Cir. 1955).

106. Ch. 1024, 64 Stat. 987.

107. *Id.* at 996-97, § 11(a),(b), 50 U.S.C. § 790 (1964). *See Communist Party of the United States v. SACB*, 223 F.2d 531, 557 (D.C. Cir. 1954), *rev'd on other grounds*, 351 U.S. 115 (1956).

108. *See generally* 1968 SACB ANN. REP. 11.

109. *Communist Party v. United States*, 331 F.2d 807 (D.C. Cir. 1963).

rulings or regulations to deal with such orders. The Board apparently hopes the Internal Revenue Service regularly reads the Federal Register.¹¹⁰

As part of its 1951 search for parties responsible for the failure of the United States China policy,¹¹¹ a subcommittee of the Senate Judiciary Committee undertook an investigation of the Institute of Pacific Relations (IPR). The hearings began July 25, 1951 and lasted until June 20, 1952. A report was issued,¹¹² which claimed that the IPR was an instrument of communist propaganda and military intelligence. In reaching this conclusion the subcommittee had the Library of Congress Legislative Reference Service do a study of the ideologies which pervaded the IPR's publications, *Far Eastern Survey* and *Pacific Affairs*. Almost three years later, on May 25, 1955, IPR's tax exempt status was revoked retroactively. The grounds, according to the revocation letter, was that IPR was engaged in the dissemination of controversial and partisan propaganda. No finding of subversiveness was apparently made by the Internal Revenue Service. Five years later, a federal district court held that the IPR was exempt.¹¹³

From 1952 to 1954, Congress, in a more determined fashion, intermittently investigated foundations to measure the subversiveness or propaganda elements inherent in these financiers of the intellectual community. In 1952 hearings, Bureau officials simply stated that it was the "practice" to deny subversive organizations tax exempt status.¹¹⁴ In later hearings in 1954, representatives of the Internal Revenue Service were asked to focus on "political propaganda and Un-American Activity as factors affecting exemption under the income tax laws."¹¹⁵ At the time of the testimony of the Assistant Commissioner, it was apparent that the Revenue Service did not rely primarily on Section 11(b) of the Internal Security Act as grounds for

110. According to the Board's General Counsel, "The Board is required by law to publish in the Federal Register an appropriate notice as to each order of the Board which becomes final. It is our understanding that the Internal Revenue Service uses such notice in connection with Section 11(b). The Service also contacts us periodically as a check." Letter from Frank R. Hunter, Jr. to *Catholic University Law Review*, Nov. 29, 1968.

111. E. LATHAM, *THE COMMUNIST CONTROVERSY IN WASHINGTON* 296-316 (1966).

112. SENATE COMM. ON THE JUDICIARY, *INSTITUTE OF PACIFIC RELATIONS*, S. REP. 2050, 82d Cong., 2d Sess. (1952).

113. *Institute of Pacific Relations v. United States*, 5 Ann. Fed. Tax R.2d 1333 (S.D.N.Y. 1960).

114. *Hearings Before the House Select Comm. to Investigate Tax Exempt Foundations and Comparable Organizations*, 82d Cong., 2d Sess. 61 (1952). Testimony of Norman Sugarman, Assistant Commissioner, Bureau of Internal Revenue. See also H.R. REP. No. 2514, 82d Cong., 2d Sess. (1952).

115. *Hearings Before the House Special Comm. to Investigate Tax Exempt Foundations and Comparable Organizations*, 83d Cong., 2d Sess. 429 (1954). For a reprint of the Assistant Commissioner's testimony at this time see 32 TAXES 533 (1954).

revoking or denying tax exempt status. Instead, it clung to its administrative judgments:

The term "un-American" does not appear as such, in the tax laws or regulations. I have no hesitancy in stating, however, that it is the firm policy of the Revenue Service to deny exemption to any organization which evidence demonstrates is subversive.

* * *

The determination of the Revenue Service denying exemption must, however, be based on lack of qualification under the terms of the tax law, namely failure to qualify as an organization organized and operated exclusively for educational purposes. It is our belief that an organization which is truly subversive cannot be considered as exclusively educational.

* * *

There are no organizations [on the Attorney General's List] which are also on our list of exempt organizations.

In addition, statutory restriction on exemption is imposed by section 11(b) of the Internal Security Act of 1950.

* * *

Thus far no organizations have been reported to us by the Department of Justice as registered under the Internal Security Act. I understand the Department of Justice is engaged in seeking to require registration of certain organizations. There has been no application of this act to any organization currently exempt under the tax laws.

Accordingly, under the laws administered by the Internal Revenue Service, determinations are not made as to whether an organization is un-American. It is sufficient for denial of exemption if it is determined that the organization does not meet the present statutory tests.¹¹⁶

The Committee's report makes no contribution whatsoever to proper analysis of the legislative and constitutional implications in relating findings of subversiveness and tax benefits.¹¹⁷ As indicated by the dissenting minority members of the Special Committee, it would have been better had no report issued at all.¹¹⁸

Less than one month after this testimony, Senator McCarran sought to legislate around the final order provision of Section 11(b) to deny exemption in the fashion earlier adopted by the administrators. His attempted amendment to the then pending Internal Revenue Code of 1954 would have made mere listing on the Attorney General's List grounds for loss of tax privileges.¹¹⁹ Additionally, if a tax exempt group was found to have made a

116. *Hearings, supra* note 118, at 434.

117. H.R. REP. NO. 2681, 83d Cong., 2d Sess. (1954).

118. *Id.* at 421.

119. 100 CONG. REC. 9038-39 (1954).

donation to a "subversive organization or to any subversive individual," the organization would lose its exemption and eligibility for deductible contributions. Although adopted by the Senate, the provision was deleted in the House-Senate conference.¹²⁰ Perhaps as a sop to the Senator, the staff of the Joint Committee on Internal Revenue Taxation was instructed to research the problem of tax exemption and communism. Nothing fruitful came of this project.¹²¹

Interim Conclusions

Except for a brief resurrection of the problem in 1964 relating to labor organizations,¹²² communism and federal tax exemption were relatively dormant until the Communist Party began its own anabasis with the Commissioner. The Internal Revenue Service began its audit of the books and records of the Communist Party on March 23, 1954.¹²³ As I have tried to demonstrate, the general consensus of the courts and the private rulings process was to permit some political activity by associations claiming a federal tax exemption so long as such activity was not significant in relation to its proper purposes. Ideologues who were "subversive" according to unilateral judgments were summarily disqualified from tax exemption and the practice has never been challenged. Despite legislation which apparently usurps administratively imposed judgments on disqualifying subversive organizations from tax exemption, no one could say with certainty what positive elements inhered in such judgments, even presuming their validity. As the record stood in 1954, neither the Party nor the revenue agent could possibly agree on the Party's qualifications, or lack thereof, for an income tax exemption. And as shall be later observed, after thirteen years of litigation, no one is any better informed.¹²⁴

120. H.R. REP. NO. 2543, 83d Cong., 2d Sess. 47-48 (1954).

121. Letter from Laurence Woodworth, Chief of Staff, Joint Committee on Internal Revenue Taxation, Aug. 7, 1967, on file with *Catholic University Law Review*.

122. SUBCOMM. TO INVESTIGATE THE ADMINISTRATION OF THE INTERNAL SECURITY ACT AND OTHER INTERNAL SECURITY LAWS OF THE SENATE COMM. ON THE JUDICIARY, RELATIONSHIP BETWEEN TEAMSTERS UNION AND MINE, MILL AND SMELTER WORKERS, USE OF TAX EXEMPT FUNDS FOR SUBVERSIVE PURPOSES, UNNUMBERED REP., 88th Cong., 2d Sess. (1964).

123. Brief for Respondent at 3, *Communist Party v. Commissioner*, No. 63763, (T.C., Aug. 14, 1956).

124. The litigation between the Communist Party and the Commissioner will be created in a subsequent issue of this *Law Review*.

APPENDIX

The following organizations were among those appended to the Attorney General's List which had moved through the private rulings process to secure an exemption ruling.

ORGANIZATION	EXEMPTION APPLICATION	EXEMPTION RULING	REVOCAION RULING	APPLICATION FILE AVAILABILITY
	Date Filed, if known	Date Allowed and Statutory Provision	Date Revoked	Available (A) Destroyed (D)
American Committee for European Workers' Relief in Birobidjan, Inc.	7-14-47	9-16-47 101(6)a	3-16-48	A
American Committee for Yugoslav Relief, Inc.	Unknown	11- 8-37 101(6)c	5- 9-50	Lost
American League for Peace and Democracy	Unknown	8- 6-46 101(6)a	6-17-48	Lost
American Russian Institute, New York	4-17-37	10-18-39 101(6)b	3-16-48	A
American Russian Institute, Philadelphia	Unknown	2- 5-30 103(6)f	6-17-48	D
American Russian Institute, San Francisco	Unknown	11-18-32 101(6)f	6-17-48	D
American Slav Congress	Unknown	11-12-41 101(6)a	6-17-48	D
American Youth Congress, (New York City Council of the)	4-17-43	5-29-43 101(8)a	6-17-48	A
Armenian Progressive League of America	4-18-39	8-11-38 101(6)c d	3-15-48	A
California Labor School, Inc.	11-20-42	12-10-42 101(8)a	3-16-48	A
Commonwealth College	8-21-44	4- 3-46 101(6)a	6-22-48	A
Council on African Affairs, Inc.	Unknown	5- 5-37 101(6)c	8- 4-49	D
Elsinore Progressive League, Inc.	3- 6-45	1-16-46 101(6)a	3-16-48	A
George Washington Carver School, New York City	12- 5-49	2-12-43 101(8)a		
Hollywood Writers Mobilization	1-28-47	12-28-49 101(8)a	1-19-56	A
Industrial Workers of the World	2-26-45	2-10-47 101(6)a	3-16-48	A
International Workers Order	Unknown	7-19-45 101(6)a	2- 3-48	A
Jefferson School of Social Science, New York City	5-24-40	6-15-45 101(1)a	8- 4-49	Lost
	1-30-45	10- 9-40 101(3)a	2-27-47	A
		10-24-45 101(6)a	3-16-48	A

Jewish People's Committee	9- 6-40	10- 7-40	101(8)a	6-17-48	A
Joint Anti-Fascist Refugee Committee	12-11-42	2- 8-43	101(6)a	1-22-48	A
Labor Research Association, Inc.	Unknown	1-24-34	103(6)e	3-16-48	A
	11- 8-37	4- 8-38	101(6)c		
	(Resubmission)	(Affirmed)			
League of American Writers	Unknown	3-31-41	101(8)a	6-17-48	D
National Council of American-Soviet Friendship	6-17-43	7-13-43	101(6)a	2- 3-48	A
National Federation for Constitutional Liberties	3-18-43	1-21-44	101(8)a	3-16-48	A
National Negro Congress	4-30-43	6-18-43	101(8)a	3-16-48	A
Nature Friends of America	7-31-47	8- 8-47	101(9)a	10-16-50	A
Negro Labor Victory Committee	4-29-44	12-30-44	101(1)a	6-17-48	A
Ohio School of Social Sciences	12- 5-44	12-30-44	101(6)a	2- 3-48	A
People's Institute of Applied Religion	3-15-43	9-18-43	101(6)a	6-17-48	A
Philadelphia School of Social Science and Art	3-31-45	5-29-45	101(6)a	2- 3-48	A
Russian American Society, Inc., San Francisco, Calif.	Unknown	4- 2-42	101(6)a	8-27-53	D
Samuel Adams School for Social Studies, Boston, Mass.	Unknown	12-13-45	101(6)a	2- 3-48	A
School of Jewish Studies	3-19-41	5-21-41	101(6)a	2- 3-48	A
Southern Negro Youth Congress	1- 1-44	2- 2-44	101(8)a	1- 6-48	A
United American Spanish Aid Committee	Unknown	2- 8-43	101(6)a	1-22-48	A
United Committee of South Slavic Americans	8-31-44	3-31-45	101(8)a	6-17-48	A
Veterans of the Abraham Lincoln Brigade, Inc., New York, N.Y.	6- 2-42	1-26-43	101(8)a	3-16-48	A
Washington Pension Union, Inc.	2-16-45	9-13-45	101(8)a	11- 6-53	A
Workers Alliance of California	1- 8-41	3-31-41	101(1)a	4-16-48	A
Workers Alliance of America, Washington, D.C.	8-11-39	12-15-39	101(1)a	4-16-48	A
Young Communist League, U.S.A.	Unknown	8-16-43	101(8)a	6-17-48	A

a. Internal Revenue Code of 1939, ch. 2, 53 Stat. 1-503.

b. Revenue Act of 1938, ch. 289, 52 Stat. 447-584.

c. Revenue Act of 1936, ch. 690, 49 Stat. 1648-756.

d. Revenue Act of 1934, ch. 277, 48 Stat. 680-772.

e. Revenue Act of 1932, ch. 209, 47 Stat. 169-289.

f. Revenue Act of 1928, ch. 852, 45 Stat. 791-883.

