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In the continuing maelstrom of controversy surrounding the tax status of the Church of Scientology, the U.S. Court of Appeals for the Second Circuit has weighed in with its opinion that payments to the church constitute tax deductible contributions. A divided panel held two church members can deduct some-\$5,000 in "donations" as charitable deductions from their income for tax purposes.

In a 2-1 decision this week in *Foley v. Internal Revenue Service*, 86-4026, the Court overturned a U.S. Tax Court ruling that disallowed tax deductions for payments in connection with religious practices known as "auditing" and "training."

Supreme Court to Rule

Four other circuits have already ruled on the tax status of the Church of Scientology's "fixed donations." While the First, Fourth and Ninth Circuits have found that the payments could not be deducted as charitable contributions under tax law, the Eighth Circuit upheld the deductions. The Ninth Circuit has also upheld the Tax Court's revocation of the church's tax-exempt status.

Just prior to the Second Circuit's ruling on Tuesday, the Supreme Court said it would hear the tax status question on the deductibility of donations from an appeal of the First Circuit case. (*Hernandez v. I.R.S.*, 87-963)

The church, which has been tangled in litigation with the I.R.S. for years, was founded more than 33 years ago by the late science-fiction writer L. Ron Hubbard, and has missions in Los Angeles and near Tampa, Fla.

At issue are payments required to be made to the church for "auditing" where members are taught to reach a higher level of spiritual awareness through classes with a trained Scientology. The payments, which are the church's major source of funding, are "fixed" at prices ranging from \$50 to \$100 an hour depending on the level of "intensity" with quantity discounts available.

Training Sessions Held

"Training" sessions paid for by members are designed to teach the

doctrines and scriptures of Scientology.

The I.R.S. has contended that the payments should not be tax-deductible because the church members are paying for a service. But the church claimed it has been singled out for unfair treatment.

The majority — Judges Ralph K. Winter and Roger J. Miner — held that the church members did not actually receive any substantial economic benefit from making the "donations" because they got "nothing of material value" in return for themselves or anyone else.

"It must be presumed that the primary purpose of the donations was charitable expectation that the religious causes of the Church be furthered, and that only incidental benefits accrued to the individual donors," Judge Miner stated in his eight-page opinion for the majority.

Dissent by Newman

Judge Jon O. Newman, in a dissenting opinion, held that "allowing a deductibility of all payments made for a purpose that a church deems to be a religious practice would greatly expand the scope of the charitable contribution category beyond what Congress has provided.

"Auditing sessions are advertised, priced, and marketed by the seller and bought by the customer as specific benefits for the purchaser, and the Tax Court could hardly have found otherwise," Judge Newman continued.

Eric M. Lieberman and Nicholas E. Poser, of Rabinowitz, Boudin, Standard, Krinsky & Lieberman, represented the church. David M. Moore, Roger M. Olsen, Michael L. Paup, and Robert S. Pomerance, Washington, D.C., appeared for the government. Lee Boothby, Berrier Springs, Mich., filed a brief for Americans United for Separation of Church and State.

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