Rev. Rul. 75-231, 1975-1 C.B. 158

Charitable contributions; church operated schools with discriminatory policies. Organizations, including churches, that conduct schools with a policy of refusing to accept children from certain racial and ethnic groups will not be recognized as tax-exempt charities under sections 170 and 501(c)(3) of the Code.

Advice has been requested whether the organizations described below, which otherwise qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954, are operated exclusively for charitable purposes.

Situation 1.

X was organized as a separate corporate entity under the auspices of an organization qualifying as a church for the express purpose of operating a school for the children of the local community in which the church regularly conducts sectarian religious services. The governing body of the church is a council whose members are selected from the church's congregation. The council selected the original members of X's board of directors and maintains full control over all aspects of its operating program.

X maintains and operates a school program that corresponds with the public school program for the same grades. Although its program includes a 10-minute religious service at the start of each school day and the devotion of other amounts of time to religious themes and subjects, the school complies with State law requirements for public education. The school has a policy of refusing to accept any children from certain racial and ethnic groups.

Situation 2.

An organization qualifying as a church, having a full complement of active religious functions, directly supervises and controls, as part of its overall operations, Y school. Y is not separately incorporated. Y's operations do not differ in any material respect from those carried on by X in Situation 1, including, as a matter of school policy, the exclusion of students from certain racial and ethnic groups.

Situation 3.

Z, an organization qualifying as a church, operates a school identical to Y in Situation 2. Z also organized and controls as a separate corporate entity a school identical to X in Situation 1. Z asserts that the policy observed by the two schools of excluding children from certain racial and ethnic groups is required by the tenets of the religion it embraces.

Section 170 of the Code provides, in part, that there shall

be allowed as a deduction any charitable contribution, as defined in section 170(c), payment of which is made within the taxable year. Section 170(c) provides, in pertinent part, that a charitable contribution means a contribution or gift to or for the use of a corporation, trust, or community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Section 501(c)(3) of the Code provides, among other things, for the exemption from Federal income tax of organizations 'organized and operated exclusively for religious, charitable... or educational purposes.' Section 1.501(c)(3)-1 of the Income Tax Regulations specifies the requirements which an organization must meet to be 'organized and operated exclusively' for one or more exempt purposes.

Section 1.501(c)(3)-1(d)(2) of the regulations provides that the term 'charitable' is used in section 501(c)(3) of the Code in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax exempt purposes which may fall within the broad outlines of 'charity' as developed by judicial decisions. Such section further provides that such term includes advancement of education.

Section 1.501(c)(3)-1(d)(3)(ii) of the regulations provides that a primary or secondary school that has a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on may qualify for exemption as an educational organization of the character contemplated by section 501(c)(3) of the Code if it otherwise meets the requirements of that section.

Rev. Rul. 71-447, 1971-2 C.B. 230, in interpreting section 501(c)(3) of the Code, concludes that an organization is not operated exclusively for charitable purposes if its activities are carried on in a manner that can be reasonably classified as contrary to well-established Federal public policy. Rev. Rul. 71-447, relying principally on Brown v. Board of Education, 347 U.S. 483 (1954), many later judicial decisions to the same effect, and certain provisions of the Civil Rights Act of 1964, finds that there is a well-established Federal public policy against racial discrimination in education, whether public or private. Rev. Rul. 71-447 expressly holds, therefore, that any school not having a racially nondiscriminatory policy as to students necessarily fails to be charitable within the common law sense contemplated by sections 170 and 501(c)(3) and other relevant Federal statutes.

The educational programs conducted by X and Y consist of secular subjects of the same scope and type commonly dealt with in the public schools or in private schools that are not religiously oriented. There is no basis for treating separately incorporated schools that, although church related, teach secular subjects and

generally comply with State law requirements for public education for the grades for which instruction is provided, any differently than private schools that are not church-affiliated. Accordingly, in Situation 1, because X fails to maintain a racially or ethnically nondiscriminatory policy as to students, X is not operated exclusively for charitable purposes and does not, therefore, qualify as a charity for Federal income tax deduction and exemption purposes under sections 170 and 501(c)(3) of the Code. The disqualification of X will not affect the exempt status of the organization qualifying as a church solely as a result of the organization and control of X, as set forth in Situation 1, prior to the effective date of the disqualification.

Situation 2 differs from Situation 1 only in that Y is not separately incorporated, and is directly supervised and controlled within the same legal organization as the church. A racially or ethnically discriminatory policy as to students is as contrary to Federal public policy under these circumstances as it is when the educational institution is separately incorporated. An analysis of the historical development of this fundamental expression of national policy reaffirms the conclusion that the form of the educational organization is not relevant for these purposes. See Norwood v. Harrison, 413 U.S. 455 (1973), in which the Supreme Court held that a state may not provide free textbooks to a private school if their availability would have a 'significant tendency to facilitate, reinforce, and support private discrimination.' In that case the Court made no exception for the schools that were not separate legal organizations but were directly operated by churches that were receiving free textbooks. It follows that the legal organization operating Y is frustrating Federal public policy by having a racially or ethnically discriminatory policy as to students. Under these circumstances, that organization is not operated exclusively for charitable purposes within the meaning of section 501(c)(3) of the Code and the regulations thereunder. Accordingly, the organization does not qualify as a charity for Federal income tax deduction and exemption purposes under sections 170 and 501(c)(3).

Situation 3 differs from Situation 1 and 2 only in that Z asserts that a tenet of the religion which it embraces requires that the schools maintain a racially discriminatory policy as to students. It is well-settled that a religious basis for an activity will not serve to preclude governmental interference with that activity if it is otherwise clearly contrary to Federal public policy. Thus, for example, the Supreme Court in Mormon Church v. United States, 136 U.S. 1 (1890), upheld the constitutional validity of a series of Federal statutes that, among other things, had abrogated the corporate charter previously granted to the members of a specific church by a special act of the territorial legislature of Utah and had directed the institution of judicial proceedings for a complete winding up of its affairs, all because of its persistent promotion and defense of polygamy in direct violation of Federal statutory law.

That those responsible for a given course of conduct may sincerely believe that they have a religious duty to act in a certain manner does not alter the situation. The First Amendment, which provides in part that Congress shall make no law prohibiting the free exercise of religion, does mere religious beliefs and opinions, bar governmental interference with but it does not affect the legal consequences otherwise attending a given practice or action that is not inherently religious. See Reynolds v. United States, 98 U.S. 145, 166-167 (1878); Mitchell v. Pilgrim Holiness Church Corporation, 210 F.2d 879 (7th Cir. 1954), cert. denied, 347 U.S. 1013 (1954); U.S. v. Craft, 423 F.2d 829, 833 (9th Cir. 1970); and Linscott v. Millers Falls Co., 440 F.2d 14 (1st Cir. 1971).

The important distinction between religious belief, on the one hand, and the legal consequences that may validly be attached to action induced by religious belief, on the other, is well illustrated by one recent line of cases interpreting the Federal drug laws. The courts have repeatedly refused to engraft a religious exception on any criminal statute outlawing the transportation of heroin, marijuana, and peyote into the United States, notwithstanding an apparent judicial recognition that a given accused might sincerely believe the use of such drugs has a proper place in certain religious ceremonies which are prescribed in both the Koran and the Bible. See U.S. v. Spears, 443 F.2d 895 (5th Cir. 1971), and other cases therein cited.

Accordingly, in Situation 3 either the separately incorporated school nor Z itself is operated exclusively for charitable purposes and neither qualifies as a charity for Federal income tax deduction and exemption purposes under sections 170 and 501(c)(3) of the Code.

The conclusions reached in the Revenue Ruling would be the same if a convention or association of churches were substituted for the organizations qualifying as churches referred to in Situations 1, 2, and 3.