FEDERAL ESTATE TAX: BEQUESTS TO ORGANIZATIONS ENGAGED IN INFLUENCING LEGISLATION

SECTION 2055(a) of the Internal Revenue Code[1] permits a deduction from a decedent's gross estate for the amount of a bequest "to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes[2] . . . no substantial part of the activity of which is carrying on propaganda, or otherwise attempting to influence legislation."[3] Two recent decisions involving interpretation of the statute have reached conflicting results with respect to the scope of this statutory prohibition.

In *Dulles v. Johnson*,[4] the testator bequeathed portions of a large estate to several New York bar associations. His executors claimed a charitable deduction for the bequests in the decedent's federal estate tax return. The district court[5] held that the bequests were not deductible because the bar associations "exist primarily to benefit members of the legal profession, and to provide a method whereby their views . . . on legislation . . . is made known to the legislators."[6] The Court of Appeals reversed and allowed the deduction, holding that the questioned activities[7] of the bar associations are "educational and charitable" and

[1] The section under consideration in the cases discussed is Int. Rev. Code of 1939, ch. 11, § 812(d), 53 STAT. 1 (now INT. REV. CODE OF 1954, § 2055(a)). The section from the 1939 Code has remained substantially unchanged except that § 2055(a)(4) has been added. Other sections of the code favoring charitable organizations use substantially the same language. See § 501(c)(3) (income tax exemption); § 170(c)(2) (income tax deduction); § 2522(a)(2) (gift tax); § 3121(b)(8)(B) (social security).

[2] Under § 2055(a)(3) trusts, fraternal societies, or associations operating under the lodge system need not be "organized and operated exclusively" for charitable purposes, so long as the particular bequest is "used exclusively" for such purposes.

[3] INT. REV. CODE OF 1954, § 2055(a)(2). A similar limitation under § 2055(a)(3) extends to bequests to trusts, fraternal societies or associations under the lodge system. Only gifts to governmental bodies under § 2055(a)(1) and veterans' organizations incorporated by act of Congress under § 2055(a)(4) are not limited in this way.

[4] 273 F.2d 362 (2d Cir. 1959), *cert. denied*, 364 U.S. 834 (1960).

[5] Dulles v. Johnson, 155 F. Supp. 275 (S.D.N.Y. 1957).

[6] *Id.* at 279.

[7] The court emphasized in its discussion four activities in which the organizations engaged and on which the district court appeared to have based its conclusion not to allow the deduction. They were: (1) regulation of the unauthorized practice of law; (2) institution of disciplinary measures for professional misconduct of members of the bar and judiciary; (3) recommendations with respect to judicial administration and

that the organizations clearly perform a public service through their activities and do not thereby "seek to achieve a selfish professional benefit."[8] In contrast to this decision is *League of Women Voters v. United States*.[9] There the Court of Claims held that, although the League is a nonpartisan association organized to give the female voter practical experience in making political decisions,[10] its practice of taking positions on legislative issues prevented gifts to the League from qualifying for the estate tax deduction.

The *Dulles* and *League* cases raise the question of whether a charitable organization[11] that devotes a substantial part[12] of its activities in attempting to influence legislation is disqualified as the recipient of a deductible contribution, if the legislation it seeks is not designed to

procedure and the endorsement of candidates for judicial office; (4) activities in support of or in opposition to various legislative proposals.

[8] "These activities serve no selfish purpose of the legal profession—rather they constitute an expert's effort to improve the law in technical and non-controversial areas." Dulles v. Johnson, 273 F.2d 362, 367 (2d Cir. 1959).

[9] 180 F. Supp. 379 (Ct. Cl.), *cert. denied*, 364 U.S. 822 (1960).

[10] The articles of incorporation of the League of Women Voters provide:

> The business and objects of the corporation shall be to promote political responsibility through informed and active participation of citizens in government; to render such other services in the interest of education in citizenship as may be possible; and to do every act appropriate or necessary to carry out any of the foregoing objects.
>
> The corporation shall not support or oppose any political party or candidate.

[11] The statute requires that organizations receiving the deductible gift be "organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. . . ." § 2055(a)(2). As interpreted by the courts, "organized and operated exclusively" means only that any nonconforming activities must be incidental to the organization's program. See Seasongood v. Commissioner, 227 F.2d 907 (6th Cir. 1955); *cf.* Better Business Bureau v. United States, 326 U.S. 279, 283 (1945). See generally 1 PAUL, FEDERAL ESTATE AND GIFT TAXATION 12.19 (1942). Under this interpretation, the bar associations in the *Dulles* case qualified as charitable organizations. Organizations such as the League of Women Voters have similarly qualified. Liberty Nat. Bank & Trust Co. v. United States, 122 F. Supp. 759 (D.C. Ky. 1954).

[12] It is evident that Congress did not intend to exclude all organizations which are concerned with legislation from qualifying as organizations to which deductible contributions can be made, since only those groups which devote a "substantial part" of their activities to propaganda and attempting to influence legislation are disqualified as recipients of charitable contributions. This view has previously been accepted under the common law definition of charitable organizations. In the United States, courts have accepted the proposition that some "reforms can be accomplished only by a change in the law, and there seems to be no good reason why the mere fact that they can be accomplished only through legislation should prevent them from being valid charitable purposes." 4 SCOTT, TRUSTS § 374.4 at 2677 (2d ed. 1956). Yet even under the common law decisions, organizations whose purposes are purely political in character are not considered charitable. *Id.* at § 374.6.

further the interests of the organization itself, but to benefit the public generally.[13]

An organization receiving the benefit of this deduction is, in effect, being subsidized by the Government and, in turn, by the community at large. Consequently, it is believed that only organizations that benefit the community should be accorded this preferential treatment. Charitable trusts present an analogous situation. "A trust will not be upheld as charitable unless the accomplishment of the purposes of the trust is of benefit . . . to the community. A trust may fail because the class of persons who are to benefit is so narrow that the community has no interest in the performance of the trust."[14] A similar approach should be utilized in determining the organizations that qualify for deductible gifts. For example, in a case involving the income tax,[15] a lawyer donated money to the Missouri Institute for the Advancement of Justice, an organization composed of both lawyers and laymen whose purpose was the establishment by constitutional amendment of a more desirable system for the selection of judges.[16] The Tax Court disallowed the deduction as a contribution to a charitable organization, holding that it was deductible as a "business expense" of the lawyer.[17] Thus, contributors who were not lawyers were precluded from gaining

[13] The statutory requirement that "no substantial part of the activities of the organization be carrying on propaganda or otherwise influencing legislation" was added to the code in 1934, yet the reasons for its presence have never been adequately explained. 78 CONG. REC. 5959 (1934). Apparently, the legislative enactment codified existing administrative and judicial policy, since, even prior to the amendment, some courts had reasoned that a gift did not qualify for the deduction if a substantial part of the organization's activities were political because it was not organized "exclusively" for the charitable purposes listed in the statute. See Slee v. Commissioner, 42 F.2d 184 (2d Cir. 1930). See generally 1 PAUL, *op. cit. supra* note 11, at 12.17. The simplest approach in applying the statute would be to interpret it literally. However, because of the way it is worded, even the legislators enacting the amendment feared that such an interpretation would deny the deduction "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 organizations that the statute does not in the slightest mean to affect." 17 CONG. REC. 5861 (1934).

[14] 4 SCOTT, *op. cit. supra* note 12, at 2700.

[15] Luther Ely Smith v. Commissioner, 3 T.C. 696 (1944). The case concerns § 170(c)(2), an income tax provision which uses substantially the same language as the sections under consideration.

[16] This movement was prompted by a general feeling in the community that the local judiciary was controlled by unwholesome political influences. One result of this feeling was a disinclination to litigate causes before the local courts.

[17] Admittedly, the lawyer could expect some benefit in this activity since a corrupt court system meant fewer cases.

the deduction. Obviously, the court failed to consider the substantial benefit the organization bestowed upon the community. Nothing could be so offensive to the public as a corrupt judiciary and nothing so beneficial as an organization which could remedy the situation. A gift to such an organization should qualify for the deduction.

The groups to be disqualified should be those "seeking to influence the passage of legislation that will be of direct financial interest to themselves or to the concern or association which they represent."[18] It should be noted that only governmental bodies and veterans' organizations are exempt from the prohibition against "influencing legislation."[19] The public benefit of contributions to the government is sufficiently obvious. It is equally obvious that a primary purpose of veterans' organizations is to promote legislation that will benefit the organization and its members. It would seem that Congress, in specifically exempting veterans' organizations from the limitations of the amendment, intended that other organizations of similar purpose, rather than organizations which benefit the community, be denied the deduction.

In *Dulles v. Johnson,* the court pointed out that the bar associations do not promote legislation of direct benefit to the organization or its members.[20] A major portion of their work is "of a technical nature involving the adequacy of proposed and existing legislation in relation to other law." Similarly, the League of Women Voters derives no selfish benefit from the legislation it promotes. Rather, its efforts are directed at areas of substantial public interest and concern, such as the strengthening of the United Nations and supporting United States ratification of the North Atlantic Pact.[21] The League attempts to promote better government generally; the bar associations attempt to free the courts from corruption and the injustice that results from delay and procedural impasse. Neither organization is engaged in a "drive or lobbying for legislation that has for its purpose the serving of the interests of a limited or selfish group."[22] Rather, their activities "inure to the benefit of all citizens and tend to promote sound government."[23] These organizations should be among those to whom gifts are encouraged.

[18] League of Women Voters v. United States, 180 F. Supp. 379, 384 (Ct. Cl. 1960) (dissenting opinion).

[19] See note 3 *supra.*

[20] Dulles v. Johnson, 273 F.2d 362, 367 (2d Cir. 1959).

[21] League of Women Voters v. United States, 180 F. Supp. 379, 381 (Ct. Cl. 1960).

[22] *Id.* at 383 (dissenting opinion).

[23] *Ibid.*

The *League of Women Voters* decision is justifiable under a literal interpretation of the statute. However, it is believed that the court in *Dulles v. Johnson*, in considering the purposes of the organizations in question and the effect of their legislative activity upon the community, reaches a result more nearly in accord with the objectives of the statute.