Can parents deduct their contributions to their Mormon missionary children?

by Joel S. Newman

Harold Davis and Enid Davis
v.
United States
(Docket No. 89-98)

Argument Date: March 26, 1990

If you give money to a church, you can usually deduct that contribution from your taxable income. If you give money to your children for their support, you can't. What if your children are Mormon missionaries, and you give them money at the church's request? Is that a deductible contribution to the church, or a nondeductible payment to your children?

ISSUE

Are amounts paid by parents directly to their children to cover their children's expenses while they serve as ordained church missionaries deductible as charitable contributions under Section 170(a) of the Internal Revenue Code?

FACTS

Harold and Enid Davis, of Idaho Falls, Idaho, are members of The Church of Jesus Christ of Latter-day Saints (the "Church"), also known as the Mormon Church. When two of their sons, Benjamin and Cecil, reached the age of 18, they applied to serve as church missionaries. They were interviewed, and, upon a favorable recommendation from local church leaders, were "called" by the Church to be missionaries. Benjamin accepted the call in 1979, and was ordained an Elder, missionary and minister of the Church. After instruction and training at the Church's Missionary Training Center in Provo, Utah, he travelled to New York, where he performed missionary work until December of 1981. Similarly, Cecil spent 18 months in the Church's New Zealand Cook Islands Mission.

During their missionary service, Benjamin and Cecil followed a daily schedule set out for them by the Church. Benjamin averaged over 70 hours per week of missionary work plus an additional 10 hours per week of study and preparation. Cecil averaged 60 hours per week of missionary work plus 10 to 25 hours per week of study, including language study. Both Benjamin and Cecil followed strict rules set by Church leaders governing their proselyting schedules, dress and grooming habits. Dating, watching movies and plays and participating in certain sports were prohibited. During the period of missionary service, neither vacations nor personal travel was allowed.

Following its long-standing practice, the Church asked Mr. and Mrs. Davis to contribute the funds necessary to finance their children's missionary activities. In letters to the Davises, the Church specified the amounts. For Benjamin's mission to New York, the amounts averaged $290 per month in 1980 and $350 per month in 1981. For Cecil's mission to the Cook Islands, they averaged $225 per month in 1981.

The Church keeps these amounts low, first, to lessen the burden of the contributions on the contributors. Second, the Church believes that a frugal life-style increases the effectiveness of its missionaries. Had the Davises refused to subsidize their children in this way, the Church would have sought contributions from Church members in the Idaho Falls community. Failing that, the Church would have supplied the funds itself.

The Church has five reasons for soliciting direct contributions from the missionaries' parents, rather than soliciting general funds from the membership at large. First, direct contributions encourage commitment and frugality from the missionaries. Second, they make the donors feel more a part of the missionaries' efforts. Third, they help preserve the tradition of an unpaid lay ministry. Fourth, they alleviate tax and visa problems in foreign countries. Finally, they reduce administrative and bookkeeping costs to the Church.

Pursuant to these written requests, Mr. and Mrs. Davis transferred $3,481 directly to Benjamin in 1980, and $4,135 in 1981. (Their brief states that a total of $4,135 was transferred to Benjamin during the two years.) During 1981, the Davises similarly transferred $1,518 to Cecil. These amounts did not exceed the amounts requested by the Church.

Benjamin and Cecil were given instructions by the Church as to how to spend the donated funds. They were required to keep financial records, and to submit weekly reports to their Mission Presidents. However, these weekly

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reports required only total expenditures, with no itemization.

Benjamin and Cecil used these funds to pay for rent, food, and transportation during the period of their missionary service. Benjamin used a small portion of his funds to purchase religious materials used in his missionary work. At the end of the missionary period, Cecil had no funds remaining from his parents' contribution. Benjamin had a small amount left, which he used to purchase a camera.

Mr. and Mrs. Davis claimed charitable deductions for amounts contributed to their sons in 1980 and 1981. The IRS denied the deductions, and the Davises sued. The Davises lost in District Court and in the Ninth Circuit. The U.S. Supreme Court granted their petition for certiorari on Nov. 6, 1989.

BACKGROUND AND SIGNIFICANCE

If we are to encourage "a thousand points of light," then we must support the missionary work of our major churches through our tax laws. Yet, in this era of huge budget deficits, we cannot afford to construe Section 170 of the Internal Revenue Code, which allows deductions for charitable contributions, so broadly that we allow deductions for activities that clearly do not deserve them. Moreover, we must make sure that it is possible for the IRS to monitor the situation, and distinguish the deserving contributions from the undeserving ones. This is the dilemma which, to a greater or lesser degree, is before the Supreme Court in the *Davis* case.

There is the question of the indefiniteness of the beneficiaries. If you give money directly to a needy person, you will not be able to take a charitable contribution deduction. However, if you contribute to a charitable organization which, in turn, distributes the money to that very same needy person, you do get a deduction. Isn't a contribution directly to the missionary the same as a contribution directly to the needy person? Alternatively, perhaps the missionary is the Church's "agent," so that a contribution to the missionary is a contribution "to" the Church.

The question turns in part on the meaning of the phrase "for the use of," added to Section 170 in 1921. If the Davises' contributions to their sons were not "to" the Church, were they "for the use of" the Church?

Then there is the meaning of the word "contribution" in Section 170, construed by the Supreme Court as "detached and disinterested generosity." *Commissioner v. Duberstein*, 363 U.S. 278 (1960). Can a transfer of money to one's own child be motivated by "detached or disinterested generosity"?

There is also the question of unreimbursed expenditures. If Johnny Carson gives a benefit performance in New York, he may not deduct the value of his services as a charitable contribution. However, he may deduct the airfare, pursuant to Treasury Regulation § 1.170A-1(g) ["Regulation (g)"]. Similarly, a missionary cannot deduct the value of his missionary services as a contribution, but he can deduct his unreimbursed expenses. However, in Benjamin and Cecil's case, there are two complicating factors. First, it was their parents, not the missionaries themselves, who paid the expenses and seek the deduction. Second, the Court must determine whether or not Benjamin and Cecil were "away from home" for tax purposes.

Regulation (g) clearly would have allowed Benjamin and Cecil to deduct their travel expenses if they had paid for them. Does it make any difference if the expenses were paid by the parents, rather than the children? The government fears that allowing Regulation (g) to apply to taxpayers other than the ones who actually performed the charitable work will allow low-bracket taxpayers, who cannot use the deduction, to shift it to their higher bracket parents, where it would do more good. This creates an incentive for abuse.

Were Benjamin and Cecil "away from home"? In charitable trips, as in business trips, one can deduct unreimbursed meals and lodging expenses only if one is "away from home." If their tax homes remained in Idaho Falls, then they were away from home during their missionary work, and the meals and lodging would have been deductible. If, on the other hand, their tax homes shifted to New York and New Zealand, respectively, then they were not away from home, and the meals and lodging were not deductible.

Three Circuits have ruled on the question of direct transfers from parents to their Mormon missionary children. The fact situations are virtually identical, since the Mormon Church uses the same methods for funding all of its missionaries. The Tenth Circuit held that the proper test is whether the primary purpose of the contribution is to benefit the Church rather than the individual. Further, there should be no difference whether the one doing the missionary work pays his own expenses, or if a third party pays them. *White v. United States*, 725 F.2d 1269 (10th Cir. 1984).

The Fifth Circuit held that contributions are deductible if either the primary benefit test of *White* is passed, or if it can be shown that the Church had control of the funds—that the Church maintained discretion as to their use. The Fifth Circuit also held that the tax homes of the missionaries had shifted from their family home to the site of missionary work. Therefore, they were not "away from home," and the meals and lodging expenses were nondeductible. *Brinley v. Commissioner*, 782 F.2d 1326 (5th Cir. 1986).

The Ninth Circuit declined to apply the primary purpose test, commenting that that test is more appropriate in cases in which the taxpayer sought a charitable contribution deduction for his own expenses. Instead, the control test was applied, and it was held that the Church did not have the requisite control over the funds. The Ninth Circuit also held that Regulation (g) only applies when the one contributing the services is also the one who incurs

the expenses. *Davis v. United States*, 861 F.2d 558 (9th Cir. 1988). Most Mormons live in the Ninth and Tenth Circuits.

The Supreme Court can choose which test will apply, and how to apply it. Its ruling will clearly affect Mormon missionaries and their families. In addition, depending upon the broadness of the ruling, it may well affect many other charitable organizations and their contributors.

It is unlikely that anything that the Supreme Court decides will have much effect upon missionaries from non-Mormon churches. The Baptist and Assembly of God churches, for example, each have slightly under 4,000 long-term missionaries in the field per year. Their missionaries, however, are funded through contributions to those churches' national offices, which exert sufficient control over the funds to meet even the harshest tests.

Even a narrow ruling would be highly significant, however, for the Mormon Church sends out 25,000 American missionaries every year. What is more, if the taxpayers lose, it is highly unlikely that the Mormons will change their funding methods to satisfy the Supreme Court, since their funding methods stem significantly from their religious beliefs and traditions.

Would a broad, favorable ruling by the Court lead to a significant increase in direct contributions to individual beneficiaries, as opposed to charitable organizations? If so, it might hurt the charities, for many donors might prefer to contribute to individuals, especially if those individuals happen to be their relatives. Even a broad ruling, though, would be unlikely to allow parents to deduct their children's college tuition payments, on the theory that they are saving the colleges the scholarships which they might have granted.

But what about a church choir tour? Suppose that the church arranges for its choir to perform at other churches in other cities, as a way of propagating the faith. It holds a spaghetti supper to fund its choir tour, but comes up short. It tells the choir members that they can go on the tour if they can pay the shortfall. Can the parents of choir members deduct their payments to allow their children to go on the tour?

The Supreme Court's decision will have an impact on the ability of the IRS to monitor charitable activities. IRS would much rather monitor the activities of one church than dozens of missionaries out in the field. A control test would allow the IRS to monitor the churches, and let them monitor their missionaries. The primary benefit test would be much more difficult for the IRS, although they have been known to win cases on the primary benefit test. When Olympic figure skater Tai Babilonia's parents attempted to deduct their costs in accompanying their daughter to various international figure skating competitions as contributions to the Olympic Team, the Court held that the payments were primarily to benefit their daughter, not the team. *Babilonia v. Commissioner*, 681 F.2d 678 (9th Cir. 1982).

ARGUMENTS

For Harold Davis and Enid Davis *(Counsel of Record, Rex E. Lee, 1722 Eye Street, N.W., Washington, DC 20006; telephone (202) 429-4000):*

1. The Davises' contributions are deductible under Section 170 as contributions "for the use of" the Church.
2. The Davises' contributions are deductible as contributions "to" the Church under Regulation (g).
3. Because missionaries are agents of the Church and are authorized to receive payments to support their own missionary efforts, such payments made to them constitute payments "to" the Church under Section 170.
4. The Ninth Circuit's decision creates an arbitrary taxing scheme and undermines Congress' general purposes in enacting Section 170.

For the United States *(Counsel of Record, Kenneth W. Starr, Solicitor General of the United States, Shirley D. Peterson, Assistant Attorney General, Lawrence G. Wallace, Deputy Solicitor General, Alan I. Horowitz, Assistant to the Solicitor General, David Pincus and Francis M. Allegra, Attorneys, Department of Justice, Washington, DC 20530; telephone (202) 633-2217):*

1. The Davises' payments to support their children were not "to or for the use of" the Church within the meaning of Section 170 of the Code.
2. The Davises' novel and exceedingly broad interpretations of the phrase "to or for the use of" are erroneous.
3. The Davises' payments to support their children are not deductible as "unreimbursed expenditures" within the meaning of Treas. Reg. § 1.170A-1(g).

AMICUS BRIEFS

In Support of the Davises

The Church of Jesus Christ of Latter-Day Saints

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