Denver Law Review

Volume 62
Issue 1 *Tenth Circuit Surveys*

Article 23

February 2021

White v. United States: Tenth Circuit Allows Parents "Charitable Contribution" Deduction for Support Payments Made Directly to Mormon Missionary Son

Jay Shoemaker

WHITE V. UNITED STATES: TENTH CIRCUIT ALLOWS PARENTS "CHARITABLE CONTRIBUTION" DEDUCTION FOR SUPPORT PAYMENTS MADE DIRECTLY TO MORMON MISSIONARY SON

INTRODUCTION

In May of 1981, the United States District Court for the District of Utah held[1] that amounts paid by taxpayers directly to a travel agent and their son for support during his period of Mormon missionary service were not deductible as charitable contributions.[2] The Tenth Circuit reversed, holding that such payments constituted contributions "for the use of" the Church within the meaning of the statute.[3] This holding contradicts many general charitable contribution principles. Moreover, the holding directly conflicts with a recent Tax Court ruling that disallowed a charitable deduction under indistinguishable facts.[4]

I. FACTUAL BACKGROUND

The plaintiffs, Don and Alice White, were members of the Church of Jesus Christ of Latter-Day Saints (Mormon Church) when this action was filed. It is the policy of the Mormon Church to have all young men fulfill a two year mission beginning at about age nineteen. The primary function of the missionary is to contact people and teach the doctrines of the Church. For a two year period, the missionaries perform this function full-time, six and one-half days a week.

To pay the expenses of each missionary, the Mormon Church re-

1. White v. United States, 514 F. Supp. 1057 (D. Utah 1981), *rev'd*, 725 F.2d 1269 (10th Cir. 1984) (Logan, J., writing for the Tenth Circuit).

2. 26 U.S.C. § 170 (1982) provides in pertinent part:

> (a) Allowance of Deduction.
>
> (1) General rule. There shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year. A charitable contribution shall be allowable as a deduction only if verified under regulations prescribed by the Secretary.
>
> . . . .
>
> (c) Charitable contribution defined. For the purpose of this section, the term "charitable contribution" means a contribution or gift to or for the use of . . . .
>
> (2) A corporation, trust, or community chest, fund, or foundation
>
> (B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes . . . .

3. White v. United States, 725 F.2d 1269, 1270 (10th Cir. 1984).

4. Brinley v. Commissioner, 46 T.C.M. (CCH) 734 (1983) (*Brinley I*). In *Brinley I*, the plaintiff was not represented by counsel. After the *White* decision, the Brinleys retained the services of the same counsel that represented the Whites. The Brinleys filed a motion to reconsider in light of the new *White* decision. The Tax Court granted the Brinley's motion, but affirmed the *Brinley I* opinion, and disallowed any deduction. Brinley v. Commissioner, 82 T.C. 932 (1984) (*Brinley II*). The Tax Court held that the Brinleys should not be allowed to take a deduction as unreimbursed expenses, and that the Mormon Church did not manifest enough control over funds because the Brinleys transferred the money directly to the son and travel agent.

quests direct support from the parents of each missionary in an amount it determines necessary to meet minimal living expenses.[5] Contributions in excess of this amount are regarded as personal gifts to the missionaries.[6]

In 1978, plaintiffs' son, Lyle White, was chosen to be a missionary. The Whites sent $100 to Murdock Travel, Inc. to defray part of their son's transportation expenses incurred during travel to his missionary post. They also sent approximately $175 per month directly to Lyle to help pay expenses for food, housing, transportation, proselytizing materials,[7] recreation and personal expenses. Between November 16, 1978, and December 19, 1978, plaintiffs deposited $560 directly into Lyle's personal checking account. Lyle was the sole authorized signator on the account.

On April 15, 1979, the Whites filed a joint income tax return for 1978. They claimed no deduction for monies paid to Murdock Travel or deposited in Lyle's account.[8] On September 21, 1979, plaintiffs filed an amended return claiming a $795 charitable contribution deduction to the Mormon Church.[9] The Internal Revenue Service (I.R.S.) denied the claimed deduction by notice of disallowance. The Whites sued for a refund in federal district court.

The District Court of Utah ruled in favor of the I.R.S.. The district court held that the Whites' method of direct contribution to an unqualified recipient precluded the Church from having full control of the funds and thus the opportunity to channel them to other objects.[10] Plaintiffs appealed the decision.

II. LEGAL BACKGROUND

Section 170 of the Internal Revenue Code of 1954 allows a deduction from adjusted gross income for charitable contributions.[11] The first such provision for a charitable contribution deduction appeared in the War Revenue Act of 1917.[12] Since its inception, the charitable contribution provision has been the subject of much controversy, stimulating increased statutory qualification.[13] From two sentences in the original legislation, the provision has been transformed into a complex

5. *White*, 725 F.2d at 1270.
6. *Id.* at 1270.
7. WEBSTER'S NEW WORLD DICTIONARY (2d College ed. 1980) defines "proselytize" as an attempt to convert a person to one's religion.
8. *White*, 514 F. Supp. at 1061.
9. *Id.*
10. *Id.*
11. 26 U.S.C. § 170 (1982). *See supra* note 2.
12. War Revenue Act, ch. 63, § 1201, 40 Stat. 300, 330 (1917).
13. *See generally* Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. 309, 344-75 (1972); Bittker, *Charitable Contributions: Tax Deductions or Matching Grants?*, 28 TAX L. REV. 37 (1972); Dye, *Personal Charitable Contributions: Tax Effects and Other Motives*, 70 PROC. NAT'L TAX A. 311 (1977); McDaniel, *Federal Matching Grants for Charitable Contributions: A Substitute for the Income Tax Deduction*, 27 TAX L. REV. 377 (1972); Stane, *Federal Tax Support of Charities and Other Exempt Organizations: The Need for a National Policy*, 1968 S. CAL. TAX. INST. 27.

statutory scheme.[14]

In its present form, section 170(a) allows a deduction for any charitable contributions made within the taxable year. "Charitable contribution" is defined in section 170(c) as "a contribution or gift to or for the use of" various charitable organizations.[15] Many eligible organizations are also exempted from taxation under section 501(a).[16] However, not every payment to an organization that qualifies as a charity is a charitable contribution.[17] To qualify, the donation must be:

1) a "contribution or gift";[18]
2) "to or for the use of" a qualified donee.

In order to fully understand the significance of the *White* decision, each of these criteria must be examined in greater detail.

A. *Contribution or Gift*

No definition of "contribution or gift" is contained in section 170. Courts have fashioned a definition based on an examination of both the common-law meaning of "gift" and their perception of congressional motives for granting the charitable contribution deduction.[19] In accordance with common-law principles, there must be a bona fide intent on the part of the donor to make a gift. Additionally, the donor must not receive any consideration in return, other than personal satisfaction from the act of generosity.[20]

Historically, there has been some confusion among the courts about what type of donative intent is necessary to effect a deductible contribution. The confusion has resulted from the different focus of various courts. Some courts have looked to the subjective intent of the taxpayer, while others have examined the objective value of the benefits received by the taxpayer for making the gift.[21] To compound the confusion, many courts have accepted one of these analyses in theory, yet have applied another in their rulings.[22]

The courts of appeals and the Court of Claims have developed three methods of analysis in determining the intent of a taxpayer in making a contribution.[23] First, the subjective method was adopted by the

14. BITTKER, FEDERAL TAXATION ON INCOME, ESTATE AND GIFTS ¶ 35.1.1 (1981) [hereinafter cited as BITTKER].

15. 26 U.S.C. § 170(c) (1982).

16. 26 U.S.C. § 501(a) (1982). See organizations listed at 26 U.S.C. § 501(c) (1982).

17. Seed v. Commissioner, 57 T.C. 265 (1971).

18. Most courts have held that the terms "contribution" and "gift" are synonymous. *See generally* Hobbet, *Charitable Contributions—How Charitable Must They Be?*, 11 SETON HALL L. REV. 1-2 (1980) [hereinafter cited as Hobbet].

19. Colliton, *The Meaning of "Contribution or Gift" for Charitable Contribution Deduction Purposes*, 41 OHIO ST. L.J. 973, 975 (1980) [hereinafter cited as Colliton].

20. Dowell v. United States, 553 F.2d 1233, 1238 (10th Cir. 1977). *See infra* note 82.

21. Hobbet, *supra* note 18, at 2.

22. Colliton, *supra* note 19, at 988-89. For a more detailed explanation of this problem, see Hobbet, *supra* note 18; Colliton, *supra* note 19; and Note, *Deductions For Charitable Contributions—An Objective Test*, 8 SUFFOLK U.L. REV. 349 (1974) [hereinafter cited as SUFFOLK].

23. Colliton, *supra* note 19, at 990-91.

Ninth Circuit in *DeJong v. Commissioner*.[24] In *DeJong*, the court reviewed payments to a religious school attended by the taxpayer's children. The organization which ran the school, the Society for Christian Instruction, charged no tuition. It did, however, furnish the parents with an estimate of the costs of educating the children and requested the parents to contribute as much as possible.[25] Finding no helpful decisions interpreting the terms "charitable contribution or gift" as used in section 170, the Ninth Circuit adopted the test[26] used by the Supreme Court in *Commissioner v. Duberstein*.[27] In *Duberstein*, the Supreme Court stated the famous "detached and disinterested generosity" test. The Court held that "if the payment proceeds primarily from 'the constraining force of any moral or legal duty,' or from 'the incentive of anticipated benefit' of an economic nature . . . it is not a gift. . . . A gift in the statutory sense, on the other hand, proceeds from a 'detached and disinterested generosity. . . .' "[28]

After quoting extensively from *Duberstein*, the *DeJong* court adopted this subjective test for purposes of section 170 analysis.[29] Based on this reasoning, the court disallowed as a personal expense the portion of the contribution which reflected the cost of the children's education.[30] The *DeJong* reasoning and test has been followed by the Second[31] and Tenth[32] Circuits.

Second, the objective method of determining donor intent was best outlined by the First Circuit in *Oppewal v. Commissioner*.[33] The *Oppewal* court followed an earlier case, *Crosby Valve and Gage Co. v. Commissioner*,[34] which had rejected the subjective test in *Duberstein*. The *Crosby* court reasoned that the "disinterested generosity" test would cause "an important area of tax law [to] become a mare's nest of uncertaintly woven of judicial judgments irrelevant to eleemosynary reality."[35]

In reviewing facts nearly identical to *DeJong*, the First Circuit stated the "fundamental objective" test by way of an awkwardly phrased question: "[H]owever the payment was designated, whatever motives the taxpayers had in making it, was it, to any substantial extent, offset by the

24. 309 F.2d 373 (9th Cir. 1962).

25. *Id.* at 374-75. This methodology is somewhat similar to the method employed by the Mormon Church in *White*. *See White*, 725 F.2d at 1270.

26. *DeJong*, 309 F.2d at 376-79.

27. 363 U.S. 278 (1960). The *Duberstein* decision involved the construction of the term "gift" relative to the § 102(b) exclusion of gifts from gross income.

28. *Id.* at 285-86. (citations omitted) (quoting Bogardus v. Commissioner, 302 U.S. 34, 41 (1937) and Commissioner v. LoBue, 351 U.S. 243, 246 (1956)).

29. *DeJong*, 309 F.2d at 379.

30. *Id.*

31. Winters v. Commissioner, 468 F.2d 778 (2d Cir. 1972). In considering facts identical to *DeJong*, the court disallowed the entire amount paid into an educational fund of the school attended by the taxpayer's children. The court found that the payment for tuition was a nondeductible personal expense of tuition. *Id.* at 781.

32. Dowell v. United States, 553 F.2d 1233 (10th Cir. 1977).

33. 468 F.2d 1000 (1st Cir. 1972), *aff'g* Jacob Oppewal v. Commissioner, 30 T.C.M. (CCH) 1177 (1971).

34. 380 F.2d 146 (1st Cir.), *cert. denied*, 389 U.S. 976 (1967).

35. *Id.*

cost of services rendered to taxpayers in the nature of tuition?"[36] Utilizing this test, the First Circuit affirmed the Tax Court ruling which disallowed a portion of the money paid to the Society for Christian Instruction for tuition.[37] The objective test has also been adopted by the Seventh Circuit.[38]

A third test was enunciated by the United States Court of Claims in *Singer Co. v. United States*.[39] Singer, a manufacturer and distributor of sewing machines, sold machines at a forty-five percent discount to various charitable organizations. Singer then claimed a charitable contribution deduction in the total amount of such discounts. The Court of Claims rejected the subjective test of *Duberstein* and instead applied what could be viewed as a "hybrid objective-subjective analysis."[40] The court noted that in many cases "[i]f the transfer was made with the expectation of receiving something in return as a *quid pro quo* for the transfer then in such an instance the I.R.C. section 170 deduction [must be denied]."[41] The Court of Claims found that Singer's predominant reason for granting discounts was the expected economic return in the nature of future increased sales.[42] Thus the court concluded that the discounts were of a business nature and were not charitable.[43]

B. *To Or For The Use Of*

A second qualifying criteria for a charitable contribution focuses upon whether the contribution was made either "to or for the use of" charitable organizations.[44] In determining whether a gift has been made "to" a charitable organization, courts generally have required that there be an actual payment to a qualified donee[45] or his agent and that the donor relinquish full control of such payment. Contributions to individuals, as opposed to organizations, are not within the ambit of section 170(c).[46] The Supreme Court, reviewing a trust for charitable public purposes, stated in *Russell v. Allen*[47] that charitable gifts must be for the benefit of an indefinite number of persons. The element of in-

36. 368 F.2d at 1002. *See* SUFFOLK, *supra* note 22, at 349-50.

37. Jacob Oppewal v. Commissioner, 30 T.C.M. (CCH) 1177 (1971), *aff'd*, 468 F.2d 1000 (1st Cir. 1972).

38. Sedam v. United States, 518 F.2d 242, 245 (7th Cir. 1975).

39. 449 F.2d 413 (Ct. Cl. 1971).

40. Hobbet, *supra* note 18, at 6.

41. 449 F.2d at 422. The court stated its test:

> It is our opinion that if the benefits received, or expected to be received, are . . . greater than those that inure to the general public from transfers for charitable purposes . . . then in such case we feel the transferor has received, or expects to receive, a *quid pro quo* sufficient to remove the transfer from the realm of deductibility under section 170.

Id.

42. *Id.* at 424.

43. *Id.* at 423.

44. 26 U.S.C. § 170(c) (1982). *See supra* note 2.

45. Mayo v. Commissioner, 30 T.C.M. (CCH) 505 (1971); Peace v. Commissioner, 43 T.C. 1 (1964).

46. *Mayo*, 30 T.C. at 507.

47. 107 U.S. 163 (1882).

definiteness is one of the essential characteristics of a legal charity.[48]

This test sheds light on a taxpayer's donative intent. When the donor relinquishes all control of a gift by giving it to an organization to direct its distribution, it becomes clear that the gift was intended for use in a manner consistent with the charity's purpose and direction and not that of the donor. Charity has been held to begin where the certainty in the beneficiary ends.[49] Whenever a beneficiary is designated by name, and his merit alone is to be considered, the bequest becomes private and not public. The gift thus loses the essential element of indefiniteness.[50] Hence, donations "to" a qualified charity are not deductible if the donor retains some measure of control over the gift. By designating a specific individual as beneficiary, the deductible nature of the contribution is destroyed, no matter how worthy the individual.[51]

Contributions to charitable organizations also qualify if made "for the use of" the organization.[52] Included are payments made by taxpayers that further the organization's charitable activities, even when not made directly to the organization, for example: unreimbursed expenses incurred by volunteer workers.[53] These expenses are allowed as charitable deductions because the charity is directing the taxpayer in the rendition of services, and the expenses are incidental to the performance by the taxpayer of such charitable services.

Against this legal background, the Tenth Circuit allowed taxpayers to deduct payments to their son when such payments were used for the son's support and living expenses during a religious mission.

III. THE CASE

A. *The Trial Court Decision*

In the action for an income tax refund, the parties filed cross-motions for summary judgment.[54] In considering these motions, the district court outlined the questions presented as whether: (1) monies paid to a church-designated travel agent to defray their son's travel expenses, and (2) monies paid directly to the son for support during the period of missionary service were charitable contributions within the meaning of section 170 of the Code, and hence deductible from adjusted gross

48. *Id.* at 167. For a detailed discussion of the public policy limitations on the availability of the federal charitable tax exemption, see Thompson, *Public Policy Limitations on the Tax Exemption for Charitable Organizations*, 2 TAX L.J. 1 (1984).

49. Thomason v. Commissioner, 2 T.C. 441, 443 (1943) (citing Russell v. Allen, 107 U.S. 163 (1882)).

50. Davenport v. Commissioner, 34 T.C.M. (CCH) 1585, 1587 (1975); Thomason v. Commissioner, 2 T.C. 441, 443-44 (1943).

51. Teitell, *Earmarked Charitable Gifts*, 117 TR. & EST. 439, 442 (1978).

52. The "for the use of" language was adopted by Congress to overrule a Treasury Department decision, O.D. 669, 3 C.B. 187 (1920), which held that contributions in trust for a charity were not deductible. Rev. Act of 1921, ch. 136, § 214(a)(11), 42 Stat. 227, 241 (1921).

53. BITTKER, *supra* note 14, at ¶ 35.12.

54. *White*, 514 F. Supp. at 1057.

income.[55]

The district court granted the government's motion for summary judgment holding that the contributions made by the Whites were not deductible.[56] Central to this holding was the finding that the contributions were made to someone other than a qualified recipient. The district court further stated that the Whites' reserved control over the gift made it a private, not public, gift.[57]

Recognizing that contributions may be deductible if received and disbursed by an authorized agent of a qualified recipient,[58] the district court held that because the funds were used solely for the support of that agent, the gift lacked the required element of indefiniteness.[59] Because the donation lacked the required generality and indefiniteness, the court held that the Whites had prevented the Church from exercising control over the funds.[60]

The district court then stated three public policy reasons for adhering to the plain meaning of the statute:

> *First*, qualified charitable institutions are limited by Congress to a particular class of institutions, the activities of which are specifically limited and are thought to be of benefit to society in general . . . . *Second*, a limited number of pre-qualified charitable recipients are easier for the sovereign to monitor . . . . *Third*, adherence provides assurance to the favored institutions and, equally important, to the public that the opportunity for abuse in the receipt and use of funds by persons who need not account to the institutions for their receipt and disbursement is minimized.[61]

B. *The Tenth Circuit Decision*

The Tenth Circuit reversed the district court and remanded the case for further proceedings.[62] The court began its opinion by stating that the holding did not depend on whether the Whites' contribution was "to" the charity or "for the use of" the charity.[63] The court was convinced from the outset that amounts contributed were at least "to the use of" the Church within the meaning of section 170.[64]

---

55. *Id.*
56. *Id.* at 1061-62.
57. *Id.* at 1061.
58. *Id.* at 1060 (citing Thomason v. Commissioner, 2 T.C. 441, 444 (1943)).
59. *White*, 514 F. Supp. at 1060-61.
60. *Id.* at 1061.
61. *Id.*
62. *White*, 725 F.2d at 1272.
63. *Id.* at 1270. Presumably, the reason for making this statement was that under prior tax law, contributions "to" a charity were eligible for an extra 10% deduction over those "for the use of" a charity. See Rockefeller v. Commissioner, 676 F.2d 35 (2d Cir. 1982) where the Second Circuit held, in considering percentage deduction limitations, that unreimbursed expenses were considered within the ambit of the extra 10% deduction.
64. 725 F.2d at 1270. In choosing the words "to the use of" the court seems to have misquoted the statute which reads "to or for the use of." *See* 26 U.S.C. § 170(c) (1982).

Citing Treasury Regulation section 1.170A-1(g),[65] the court stated that the government's test of full fund control by the Church should not apply to unreimbursed expenses of the taxpayer in performing services for a qualified charity.[66] Instead, the court stated that the proper consideration should focus on the donor's intent.[67] The court then stated the controlling test as "whether the primary purpose of the expenditure was to further the aims of the charitable organization or to benefit the spender."[68] Applying this test, the court followed a Tax Court case[69] which had allowed a missionary to deduct his travel and living expenses while away from home.

The court then identified the main issue of the case as whether taxpayers may deduct the personal expenses incurred by their dependent son but paid with their money.[70] Acknowledging *Brinley*,[71] a case with facts very similar to the case at bar, and I.R.S. Revenue Rulings[72] which would deny the deduction on the ground that it was a gift to the son, the court ruled that the payments were deductible.[73] The Tenth Circuit reasoned that there was no rational basis for distinguishing the payment of expenses of a dependent son from the payment of a taxpayer's own expenses in performing the same services.[74]

Analogizing the facts as similar to a situation of parents supporting their child, the I.R.S. had argued that such expenses were more personal than charitable in nature and were thus non-deductible under section 262.[75] The court rejected this argument, stating that if "section 262 barred a deduction for expenditures made on behalf of a dependent child, it would also bar a deduction for living expenses incurred by a taxpayer while performing missionary services."[76] These expenses, the court noted, were expressly allowed under Treasury Regulation section 1.262-1(b)(5) and Treasury Regulation section 1.170A-1(g).[77]

---

65. Treas. Reg. § 1.170A-1(g) (1983) states as follows:
[U]nreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution. . . . [O]ut-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible . . . .

66. *White*, 725 F.2d at 1271.

67. *Id.*

68. *Id.* Later in the decision, the court rephrased the test to be "whether the primary purpose is to further the aims of the charitable organization or to benefit *the person whose expenses are being paid.*" *Id.* at 1272 (emphasis added). The reason for this change was not given.

69. Smith v. Commissioner, 60 T.C. 988 (1973).

70. 725 F.2d at 1271.

71. 46 T.C.M. (CCH) 734 (1983). *See supra* note 4.

72. Rev. Rul. 62-113, 1962-2 C.B. 10. This ruling disallows such a charitable contribution as in the present case where the gifts were earmarked and not made to a general fund or common pool.

73. 725 F.2d at 1271.

74. *Id.*

75. Brief for Appellee at 6.

76. *White*, 725 F.2d at 1271.

77. Treas. Reg. § 1.262(b)(5) (1983) provides that personal expenses "which include transportation expenses, meals, and lodging" are deductible by the taxpayer "if incurred

The court went on to distinguish cases denying deductions when the donors earmarked a contribution to a person or defrayed expenses of a person who would otherwise be dependent upon the charity. The court stated that such payments "served the charity only by eliminating the need of one possible object of the organization's bounty."[78] Persons receiving such contributions were not serving the charity, as was Lyle, but rather were beneficiaries of a service provided by the charity.[79]

The *White* opinion concluded by reiterating the primary purpose test.[80] Without mentioning the district court's rule or reason, the court held that the expenditures were deductible because the money primarily served the Church.[81]

IV. ANALYSIS

The holding in *White* is flawed in that it extends beyond the well-settled parameters defining charitable contributions. In light of established authority, the Whites, in making a direct payment to their son, received a benefit greater than the act of generosity or the benefit flowing to the public; hence, the deduction should have been denied. The claimed deduction should also have failed as a private gift; it was not made to a qualified donee and was earmarked for one specific individual.[82]

A. *A Contribution or Gift*

In *Dowell v. United States*,[83] the Tenth Circuit adopted the subjective donative intent test of *Duberstein*.[84] A gift must proceed from disinterested generosity; it must be a voluntary transfer without consideration other than the personal satisfaction of having performed an act of generosity.[85] In reviewing opinions which disallowed deductions, the *Dowell* court approved decisions that disallowed any deductions because of legal or moral obligations. The taxpayers were found to have expected or anticipated a benefit in making a gift of this sort.[86]

---

in traveling away from home" under conditions specified in subsection (g) of Treas. Reg. § 1.170A-1 (1983). See *supra* note 65 for contents of Treas. Reg. § 1.70A-1.

78. 725 F.2d at 1271.

79. *Id.* at 1271-72.

80. *Id.* at 1272. *See also supra* note 68.

81. 725 F.2d at 1272.

82. The Tenth Circuit also erred by not deferring to the district court's interpretation of the facts and conclusions of law as mandated by Dowell v. United States, 553 F.2d 1233 (10th Cir. 1977). The *Dowell* court also held that interpretation of intent or motive is reserved for the finder of fact and is not to be disturbed on appeal unless held to be clearly erroneous. 553 F.2d at 1235, 1238 (citing FED. R. CIV. P. 52(a)). The *DeJong* court also suggested that appellate review of determination of gifts must be restrictive and must stand unless clearly erroneous. 309 F.2d at 376. No such finding was made in the *White* reversal.

83. 553 F.2d 1233 (10th Cir. 1977).

84. Id. at 1238. See *supra* notes 23-32 and accompanying text for an explanation of the subjective test.

85. 553 F.2d at 1238.

86. *Id.* at 1239.

The parent-child relationship clearly creates at least a moral obligation to provide for a child's living expenses. The existence of a parent-child relationship has been the basis for disallowing deductions for support in adoption cases[87] as well as school tuition cases.[88]

In *McMillan v. Commissioner*,[89] the taxpayers claimed that one-half of a $150 "adoption fee" was charitable and deductible. The court held it to be a payment in furtherance of taxpayers' purpose of adopting the child. The expenses incurred were those of a personal or family nature and hence non-deductible.[90]

In *DeJong*,[91] the Tax Court held that the payments pledged and made by the parents to help defray tuition expenses were not voluntary and gratuitous contributions motivated merely by the satisfaction which flows from the performance of a generous act. They were induced, in substantial part, by the benefits which the parents sought and anticipated from school enrollment.[92]

If the luxury of a child's education can be found to create a personal benefit to the parent, then certainly a well-nourished and sheltered child also must create a personal benefit to the parents. The court of appeals in *White* realized that the direct payment from the parent to the child would create a greater incentive for church members to support a missionary from their family.[93] This incentive is not created by an intent to further the work of the church but by the personal nature of the gift. A satisfaction beyond the act of charitable generosity inures to such taxpayers—the satisfaction a parent derives in providing for a child.

A parent's moral and legal obligation creates the necessity of child support. Regardless of where or what Lyle White was doing, his parents would have provided support. The Fifth Circuit, in *Orr v. United States*,[94] stated a test which, by analogy, applies to this situation.[95] In construing insurance premiums a taxpayer paid on vehicles used, in part, for charitable purposes, the court held that such insurance would have been paid even if the taxpayer had not done any charitable work at all. The court stated that the definition of "gift" will not stretch to include payments which would have been made for non-charitable reasons. The payments were therefore disallowed as a charitable deduction.

Similarly, the Whites had at least a pre-existing moral duty to support Lyle.[96] The payments to Lyle for food and housing incidentally

87. *See, e.g.*, McMillan v. Commissioner, 31 T.C. 1143 (1959).

88. *See, e.g.*, Oppewal v. Commissioner, 468 F.2d 1000 (1st Cir. 1972); DeJong v. Commissioner, 309 F.2d 373 (8th Cir. 1962); Cooper v. Commissioner, 264 F.2d 889, 891 (4th Cir. 1959).

89. 31 T.C. at 1143.

90. *Id.* at 1147.

91. 36 T.C. 896, 900 (1961).

92. *Id.*

93. 725 F.2d at 1270.

94. 343 F.2d 553 (5th Cir. 1965).

95. *Accord* Peace v. Commissioner, 43 T.C. 1 (1964).

96. The Whites advanced a Fifth Circuit case, Winn v. Commissioner, 595 F.2d 1060 (5th Cir. 1979), as support for taking a deduction. In *Winn*, a taxpayer was allowed a

benefited the Church; however, the benefit to the Church was not the main reason for the payments. In short, the payments would have been made anyway. The personal benefit far exceeded the benefit, if any, that inured to the public.[97]

B. *To The Charity*

By making the gift directly to an individual, the Whites destroyed one of the essential elements of a charitable gift—indefiniteness.[98] Lyle White and Murdock Travel, Inc., were not qualified charities under section 170(c); at best, they were agents of the Church.[99] However, because the payments were used by them and not given to the Church, any Church control over the funds was precluded. The payments were private, not public, because the benefit was for the support and subsistence of the son, and not the Church. The payments should have been disallowed due to the lack of Church control.

A plain reading of the statute, as well as the relevant case law, supports this conclusion. In *Mayo v. Commissioner*,[100] the court disallowed deductions for payments made directly to Mennonite missionaries rather than through organizational channels. The court held that the donee must be an organization designated in section 170(c).

In *Morey v. Riddell*,[101] a case the Whites cited for support, the court found that the payments were to the church although the checks were made payable to four ministers. In so ruling, the court noted this was the only way to contribute to the particular "church" in question.[102] The church had no distinct name, written charter, constitution, by-laws or operational guide.[103] Moreover, the church maintained no permanent headquarters, did not maintain records, and its funds were not held in a church designated bank account.[104] The court also found that the taxpayers clearly did not intend to make contributions to the ministers individually, but placed the funds in the ministers' hands as agents for the use of the church.[105]

In *Lesslie v. Commissioner*,[106] another case cited by the Whites, the

deduction for funds which were eventually channeled to his first cousin's checking account to use in her missionary work. This case can be distinguished from *White* on several grounds. Winn took no dependency deduction for her on his income tax return and decided to contribute to her missionary cause only after becoming disillusioned with several other charitable organizations to which he had previously donated.

97. Thus the facts of *White* satisfied the objective test. *See supra* notes 33-38 and accompanying text.

98. *See supra* notes 44-51 and accompanying text.

99. Before proceeding on a mission, missionaries are ordained as ministers and may perform civilly recognized marriages. Thus, as officers of the Mormon Church, they could be found to be agents. Murdock is the travel agency exclusively used by the Church in sending missionaries to their posts and could conceivably be deemed the Church's agent.

100. 30 T.C.M. (CCH) 505 (1971).

101. 205 F. Supp. 918 (S.D. Cal. 1962).

102. *Id.* at 921.

103. Other than the Holy Bible. *Id.* at 919.

104. *Id.*

105. *Id.*

106. 36 T.C.M. (CCH) 495 (1977).

court allowed a charitable contribution deduction for a gift of a check to a Presbyterian missionary. The Tax Court found it dispositive that the money was not to be used for the missionary's personal use or even at his discretion but rather was held in trust for the church.[107]

The majority of cases hold that even when payments are made to an established organization, the charitable deduction is disallowed when the donor designates an individual as beneficiary of the contribution. In *Tripp v. Commissioner*,[108] the court disallowed a deduction even though the contribution was made to a common fund to be used in fulfilling the organization's purpose of education. The fact that the payment was designated for one person, rather than being a gift to the college for an indefinite number of persons, precluded qualification as a charitable contribution.

In *Thomason v. Commissioner*,[109] the court disallowed a contribution to a children's home because the payments were earmarked for an individual.[110] This case was cited and followed by the Tax Court in *Davenport v. Commissioner*,[111] which disallowed a payment made to a missionary's landlord. The *Davenport* court reasoned that it is irrelevant that the church might have chosen to maintain the same residence. By making payments directly to the landlord, the taxpayer took this option from the church.[112] Because the payments were to an individual, the court also found it irrelevant that the payments relieved the Church of the necessity of paying for the residence.[113] It is irrelevant that the Mormon Church might have chosen to support Lyle. Because the payments were made directly to Lyle, the payments lost the requirement of indefiniteness of bounty and prevented the Church from directing it elsewhere if necessary.

B. *For the Use Of The Charity*

The Tenth Circuit's opinion is premised on the following syllogism: Lyle White incurred expenses while performing services for the Church; the expenses were paid by his parents; hence, the Whites should be entitled to a deduction for the expenses because they were "for the use of" the Church.

The plain language of Treasury Regulation section 1.170A-1(g)[114] allows a deduction for unreimbursed expenditures incurred incidentally to the rendition of services *by a taxpayer* to a charity. The Whites did not render any services to the Church, nor incur any expenses, and thus

107. *Id.*

108. 337 F.2d 432 (7th Cir. 1964).

109. 2 T.C. 441 (1943).

110. *Id.* at 444-45. Again, a court disallowed a contribution even though it was meant to fulfill the charitable organization's purpose.

111. 34 T.C.M. (CCH) 1585 (1975).

112. *Id.* at 1587.

113. *Id.* at 1588.

114. Treas. Reg. 1.170A-1(g) (1983). *See supra* note 65.

should not be allowed to take a deduction.[115]

Generally, no deductions are allowed to a taxpayer for contributions made by another, even when the money which is given to the organization is provided by the taxpayer.[116] Applying this rule to the instant case, the Whites should not have been allowed to take a tax deduction for expenses Lyle incurred in his contribution of services, even if the expenses were paid by the Whites.

Judge Logan, writing the opinion of the court, reasoned that *Rockefeller v. Commissioner*[117] allowed the charitable contribution deduction.[118] In *Rockefeller*, the court permitted deductions for salaries taxpayers paid to employees who were specifically hired and directed by the Rockefellers to provide services to charities which the Rockefellers supported. This case, however, is readily distinguishable. Prior to hiring, the Rockefellers had no duty, legal or moral, to make such payments to the employees. Additionally, unlike Lyle, the employees did not incur any personal expense. The only expense involved was the salaries contractually owed by the Rockefellers.[119] The Rockefellers did not receive any benefit other than that which results from an act of generosity.[120]

V. CONCLUSION

The Tenth Circuit in *White v. United States*[121] allowed the taxpayers, the Whites, to deduct as charitable contributions payments made directly to their Mormon missionary son for purposes of defraying his living expenses incurred while on his mission. The Whites' manner and motive in making a charitable contribution did not conform with established principles governing charitable contributions. The granting of tax deductions is a matter of legislative grace. Regardless of any equitable consideration, only when there is a clear statutory provision and when such provision is followed can any particular deduction be al-

115. Lyle White, however, might be entitled to deduct his own expenses. *See White*, 514 F. Supp. at 1060 n.2.

116. In Herring v. Commissioner, 66 T.C. 308, 312 (1976), the taxpayer sent his wife funds for her support and their child's support while she was separated from the taxpayer. The Tax Court held that the taxpayer was not entitled to any deductions for charitable contributions made by his wife to a church. In J. Morgan Wilson v. Commissioner, 52 T.C.M. (P-H) ¶ 52,046, a taxpayer who supported his mother sought to deduct as charitable contributions amounts contributed by his mother, from the allowance he gave her, to various churches and charities. His mother was his dependent. The court disallowed the deductions on the ground that the taxpayer had already received an allowance for the deductions in the dependency exemption. The court held that if a taxpayer makes a gift of money to another person, and that person makes a gift to a church or charity, a deduction is allowed to the person who makes the church contribution, but a deduction is not allowed to the taxpayer who supplied the funds.

117. 676 F.2d 35 (2d Cir. 1982).

118. *White*, 725 F.2d at 1271.

119. The employees were not "donating" services as was Lyle. They were paid salaries and thus were not performing voluntary services.

120. In fact, if the employees had been directed to perform business functions, the whole cost could presumably have been written off as a business expense. Thus, by directing the employees to perform services for charities, the Rockefellers suffered a loss.

121. 725 F.2d 1269 (10th Cir. 1984).

lowed.[122] As the Supreme Court recognized: "While a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not . . . and may not enjoy the benefit of some other route he might have chosen to follow but did not."[123]

There is no practical reason why the Whites could not have donated money directly to the Church's missionary fund.[124] By donating the money to a common fund, the Whites would have relinquished all control over the money, thereby clearly bringing the payment within section 170. It is irrelevant that the Church might choose to apply the funds in the same manner as the taxpayer.[125] A taxpayer's primary purpose in making a disinterested gift of generosity controls—not the application of the contribution by the charity.

By making the gift to the church, the indefiniteness of bounty can be assured. Intentions could not be questioned because the taxpayer would have no control over disbursement of the funds, and thus would have no expectation of any specific benefit beyond the satisfaction derived from the act of generosity. Only by conforming to this well-established model may Congress and the public be assured that such funds will be used in a manner consistent with legislative intent.

Jay Shoemaker

122. Commissioner v. National Alfalfa Dehydrating, 417 U.S. 134, 148-49 (1973).
123. *Id.* at 149.
124. The Church argued that increased administrative costs would be involved. 725 F.2d at 1270. This is, however, just one of the costs of tax-exemption.
125. Davenport v. Commissioner, 34 T.C.M. (CCH) 1585, 1587 (1975); *see also supra* note 111 and accompanying text.