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The Honorable Richard Lugar
United States Senate
Washington, DC 20510

Attention: Shellie Bressler

Dear Senator Lugar:

This letter is in response to your inquiry on behalf of your constituent, [redacted], concerning an article in the New York Times on March 21, 2004. The article describes a dispute between the Internal Revenue Service and a married couple over tuition payments made to Jewish day schools. Although the article correctly indicates that the courts agree with the IRS that the tuition payments are not deductible, [redacted] asks why the IRS does not permit a deduction for payments he makes to have his children "trained by the Catholic Church." [redacted] suggests that because the IRS allows adherents of the Church of Scientology to deduct certain payments made to it, he should be entitled to the same treatment. We assume that [redacted] believes that tuition paid to a parochial school should qualify as a charitable contribution deduction under § 170 of the Internal Revenue Code.

A taxpayer's payment of tuition in return for the education of his children has long been held to be a nondeductible family expense, not a gift or charitable contribution to the educating institution. Channing v. United States, 4 F. Supp. 33 (D. Mass. 1933), aff'd, 62 F.2d 986 (1st Cir.), cert. denied, 291 U.S. 686 (1934); Cooper v. Commissioner, 264 F.2d 889 (4th Cir. 1959).

It is equally well-settled that tuition paid so that taxpayers' children could receive a religiously-oriented education is not a gift or contribution within the meaning of § 170(c). The cost of sending one's children to a parochial school is a personal living expense, the deduction of which is prohibited by § 262. Fausner v. Commissioner, 55 T.C. 620, 624 (1971).

Tuition payments are, by definition, made in return for educational benefits. Whether made to purchase secular education or religious education, tuition payments are a simple exchange of money for services, not a gift. For that reason, tuition payments

are not deductible. See, e.g., McLaughlin v. Commissioner, 51 T.C. 233, 234-35 (1968).

Taxpayers who attempted to disguise tuition payments have experienced no success in the courts. See, e.g., DeJong v. Commissioner, 309 F.2d 373 (9th Cir. 1962); Oppewal v. Commissioner, 468 F.2d 1000 (1st Cir. 1972); Winters v. Commissioner, 468 F.2d 778, 781 (2d Cir. 1972). In each of the foregoing cases, the taxpayers and the exempt organization attempted to eliminate the "quid pro quo" nature of the transaction. The schools did not officially charge "tuition." Contributions were requested but not compelled and the schools represented that no student would be turned away for failure to contribute to the funding entity. Nevertheless, because the taxpayers expected, and in fact received, a valuable benefit in the form of religious-oriented education for their children, the courts in the above-referenced cases recognized that the taxpayers' "voluntary" contributions were, in effect, payments of tuition.

I hope this information is helpful. If you have any questions concerning the deductibility of tuition payments, please call [redacted], Identification Number [redacted], at [redacted]

Sincerely,

Robert A. Berkovsky
Branch Chief
Office of Associate Chief Counsel
(Income Tax & Accounting)