



Federal Tax ADVISORY ■

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Private Foundations and Lobbying

Loren E. Parks v. Commissioner, 145 T.C. No. 12 (2015)

The Tax Court mostly ruled against a private foundation and its main contributor and foundation manager by approving the assessment of the private foundation excise tax on lobbying expenditures. However, the court gave them a partial victory as to one set of expenditures. The reasoning of the court for that victory could prove to be useful to private foundations.

A private foundation is a Section 501(c)(3) organization that is not a “public charity.” In general terms, it is an organization with qualifying purposes and activities but is funded by a person who controls it. While it is subject to the limits on lobbying and political activities that apply to all charities, it and its managers also can be subject to excise taxes on expenditures for such purposes.

The Parks Foundation was a private foundation that ran radio ads in several years opposing or supporting several voter initiatives (referenda) in Oregon. The three tests for the taxable expenditures are:

- The communication addresses “specific legislation.”
- The communication “refers to” that legislation.
- It “reflected a view on” the legislation.

The court ruled that the initiatives were legislation (which was not disputed) and that the ads referred to them. It also ruled that most of the ads reflected a view, although that was done in an indirect way. But in two ads, the foundation did not reflect a view.

Those two ads appeared to state facts that were generally true, though incomplete and possibly misleading. In other words, they showed one side of the story. The IRS asserted that the foundation was required to be “educational” by stating both sides so that the hearer could decide for herself.

There was a basis in the regulation for the two-sided discussion requirement. However, the IRS also had issued other guidance that did not contain that requirement as a specific element of an educational “full and fair exposition.” Based on that other guidance, the court ruled for the foundation.

The IRS may appeal the issue it lost, but if it does, the foundation is likely to appeal the rulings against it, which it may do in any event. But if the decision is not reversed on appeal, it stands for the proposition that a private foundation may be able to avoid the excise tax for lobbying communications if it states true facts for its side of the debate. It also should avoid doing so in an “inflammatory” manner.

It should be observed that Mr. Parks was not denied his charitable contribution deduction, even for the spending that was subject to the excise tax.

For additional information, call [Jack Cummings](#) at 919.862.2302.

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