

TAX EVASION AND AVOIDANCE

HEARINGS

BEFORE THE

JOINT COMMITTEE ON TAX EVASION AND AVOIDANCE

SEVENTY-FIFTH CONGRESS

FIRST SESSION

PURSUANT TO

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TAX EVASION AND AVOIDANCE

WEDNESDAY, JULY 28, 1937

JOINT COMMITTEE ON TAX
EVASION AND AVOIDANCE,
Washington, D. C.

The joint committee met in the hearing room of the Committee on Ways and Means in the New House Office Building, at 10:30 a. m., Hon. Robert L. Doughton, chairman, presiding.

The CHAIRMAN. The committee will be in order. Pursuant to the understanding that was reached yesterday, Mr. Robert H. Jackson, Assistant Attorney General, was requested to appear this morning, to make a statement with reference to Mrs. Roosevelt's tax returns. I observe Mr. Jackson in the committee room. Will you please come forward, Mr. Jackson, and give the stenographer your name, address, the position you hold with the Government at the present time, and any other necessary information?

STATEMENT OF ROBERT H. JACKSON, ASSISTANT ATTORNEY GENERAL OF THE UNITED STATES

The CHAIRMAN. You understand, I presume, Mr. Jackson, the matter you are expected to discuss. Would you prefer to make your statement without interruption and answer questions afterward?

Mr. JACKSON. That is always a convenient way to handle it. I have a very short statement on the matter about which I understand the committee wants to be informed, and I will be glad to answer any questions that I can.

The CHAIRMAN. You may proceed with the understanding that you will not be interrupted until you have completed your statement, after which, of course, the committee will expect you to answer such questions as members of the committee may wish to propound to you.

Mr. JACKSON. I understand that your committee desires to be informed as to the Treasury position that Mrs. Roosevelt's broadcasts, proceeds of which were devoted to charity, did not result in taxable income to her. I will state, first, its legal basis; second, whether it was a discrimination in her favor or is applicable to taxpayers generally; and, third, its effect on the revenues. I am glad to have the opportunity to furnish this information.

I. LEGAL BASIS

The basis of the answer to Mrs. Roosevelt is in the fact that she received no income for herself and was no richer directly or indirectly for her labors. She took the position that she was not willing to

make these broadcasts for a profit or for her own advantage, but that she was willing to give her time and services to the needy. Aside from the \$1 "to make the contract binding", she derived no benefit whatever that is measurable in terms of money.

The income tax is primarily based, not on what a person's services are worth or what they produce to the person for whom they are rendered, but upon the amount that taxpayer receives, actually or constructively. If he charges more than his services are worth, he must pay on all he receives. If he receives less than his services are worth, he pays only on what he has received, and if he donates his services in good faith and realizes no income, he has no tax. There are many instances where services of very substantial value are donated to worthy causes and result in income to the organization benefited, but it has never been held that the donor of services must pay a tax on what the donated services may be worth to the organization benefited.

The doctrine of constructive receipt of income is often invoked by the Bureau of Internal Revenue to prevent the use of this just rule as a means of evasion or avoidance. One who earns a salary or wages or has income from invested property cannot assign that income nor order it to be paid to a person or corporation so as to avoid a tax merely by routing his income so as not to pass through his hands. But this doctrine of constructive receipt of income cannot be used to create income when there is no income, and has never been used to justify a tax on services devoted to charity. Mrs. Roosevelt declined to work for money and was only willing to serve for charity's sake. It was and is my opinion that such benefit broadcasts do not result in taxable income.

II. THIS POSITION WAS NOT A DISCRIMINATION

Never, under any administration, has the Bureau of Internal Revenue considered as income the value of proceeds of services donated in good faith to charity. Many public-spirited men are donating to worthy enterprises much time which could be devoted to earning income. There are theoreticians who believe that the value of donated services should be treated as constructively received income and offset by a donation. The Bureau of Internal Revenue has never acted upon that theory.

The answer to Mrs. Roosevelt followed the advice given to others extending back a dozen years or more. For example:

As long ago as 1924, in an unpublished ruling, the Bureau of Internal Revenue held that where a professional baseball club agreed to, and publicly announced that it would, donate 10 percent of the gate receipts of a certain game to the American Red Cross, such 10 percent was impressed with a trust in favor of the Red Cross and was not income taxable to the ball club.

In 1925 the Bureau ruled, in an unpublished letter, that amounts collected by theaters for admissions which were turned over to a benefit fund were not income of the theater collecting them. Both of these rulings go considerably beyond the disposition of Mrs. Roosevelt's question.

In 1924, in an unpublished memorandum, the position was taken that the proceeds of a series of lectures by an eminent foreigner, for

the benefit of an educational corporation, were not taxable to the lecturer.

Without formal rulings the Commissioner of Internal Revenue has for years permitted the proceeds of charity concerts, charity prize fights, charity baseball games, and similar entertainments, to be treated on the same basis as Mrs. Roosevelt's lectures and as not taxable except insofar as the performers personally benefited therefrom.

At the same time the Bureau has been diligent to see that this attitude was not abused as a cover for an assignment of income, or an order to pay income to third persons, which was in substance an avoidance of taxes. The line is not always easy to draw and in each case it must be determined whether the transaction was in fact a donation of services without income.

III. EFFECT ON REVENUES

The precedent created in earlier cases and followed in the case of Mrs. Roosevelt has not resulted in serious loss of revenue. It is safeguarded against abuse as I have indicated. Distinction must be made and is made between income that would have been received, actually or constructively by a taxpayer apart from his decision to make a contribution to charity, and cases where no service would have been rendered and no income would have accrued to anyone without the charitable motive.

The effect of making persons who render services to charity pay a tax on them would be to deter charitable endeavor without benefit to the revenues. Many would hesitate to give benefit efforts for charity, if, in addition to the services, they also pile up a tax liability.

Even her critics will hardly contend that it would be possible for Mrs. Roosevelt, after cutting herself off from all income from her broadcasts, to also continue to be out of pocket for a tax on income she didn't get. Her only alternative was to reduce the benefit to the charity by the amount of the tax, which is the equivalent of taxing the charity itself. That is not the policy of the law.

Consistently, therefore, with a long-established practice of the Bureau and consistently with what seemed to me common sense as well as good law, I concluded that she was not in receipt of any income, was not required to report the income which the charity had received by reason of her efforts and was not subject to any tax thereon.

I do not know whether that covers all that you want to know, Mr. Chairman, but I am at your service.

The CHAIRMAN. Are there any questions?

Senator HARRISON. It would seem to me to cover it very fully.

Mr. VINSON. It looks to me as though we ought to be able to say "amen! amen!" on this question.

Mr. CULLEN. I think it is a very clear statement.

The CHAIRMAN. If there are no questions—

Mr. TREADWAY (interposing). Mr. Chairman, may I ask Mr. Jackson a few questions?

The CHAIRMAN. Certainly, Mr. Treadway.

Mr. TREADWAY. I approach this line of inquiry, Mr. Jackson, with great diffidence. I realize your outstanding ability as a legal expert and official of the Government, and I have not the readiness of inter-

rogatory which will enable me to place questions before you that in any way will be difficult, I am sure, for you to answer.

I want to say that in this effort to discover various methods of tax avoidance, I have not endeavored to cast the slightest aspersion on Mrs. Roosevelt's excellent intentions. The point that seemed to come to me was, whether or not your advice was of the character and quality that you ordinarily give in legal matters. So with this introduction possibly you will not be offended by the type of my questions.

Mr. JACKSON. I will not be offended at anything, Mr. Treadway.

Mr. TREADWAY. I realize that, Mr. Jackson.

Mr. JACKSON. I am glad to answer any question that I can. I do not think you need to apologize, however, for either your experience or your ability to ask questions.

Mr. TREADWAY. I frequently, Mr. Jackson, if I may add just this word, feel the misfortune of not having had an early legal training.

Mr. JACKSON. I am not sure it is a misfortune.

Mr. TREADWAY. My whole knowledge of the law consists in having sat around one of these tables for a good many years and having picked up from such leaders at the bar as my colleague, Mr. Vinson, and others of this committee a few pointers, and I have absorbed perhaps just a little of their technique.

Senator HARRISON. You get along pretty well, Congressman.

Mr. TREADWAY. In your letter to Chairman Doughton under date of July 14, 1937, you stated:

In 1934 Mrs. Roosevelt submitted her broadcasting proposal to the Treasury to learn whether the proceeds might go to the charity she wishes to aid, free of tax, or whether, in substance or in form, the proposed contract was such that provision should be made for the payment of the tax.

From this statement am I correct in assuming that at the time the ruling was requested the contract had not yet been formally entered into?

Mr. JACKSON. I do not think you are correct. I think that it had been entered into, but I am not sure of that because it is some time ago and I do not recall whether the contract was executed, but it is my judgment that it was.

Mr. TREADWAY. It was, I suppose, on or about that time, was it not?

Mr. JACKSON. Yes. I think that it had been executed but I would not be certain of that.

Mr. TREADWAY. Of course, there would be a distinction. In making a formal ruling upon a prospective as distinguished from a completed transaction, were you not making a particular exception in Mrs. Roosevelt's case? Let me call your attention to a ruling of Commissioner Helvering, known as Mimeograph 4369, which states in part:

The Bureau is receiving a large number of requests from taxpayers and counsel for rulings which relate to the character and extent of tax liabilities resulting from prospective as distinguished from consummated transactions. Except upon specific authorization by the Commissioner of Internal Revenue or as indicated in (a) below, the established policy of not complying with such requests will continue to be followed.

Mrs. Roosevelt's contract not coming under the category of the exceptions noted in subparagraph (a), was any specific authorization given by the Commissioner for issuing a ruling in her particular case?

Mr. JACKSON. You have embodied several questions. I will try to cover them all.

In the first place no formal ruling was made. You have to distinguish between formal rulings which are written up in form and with great care for publication where they will perhaps guide large numbers of taxpayers, and inquiries by taxpayers, which have only a limited interest and are therefore never published. This fell in the class of inquiries which did not call for a formal ruling.

Your question as to whether it was taken up with Commissioner Helvering: The answer is "no", it was not taken up with Commissioner Helvering; for that reason, it was not a formal ruling.

In general it was our policy, when I was there, to avoid answering hypothetical questions; or taxpayers writing in and saying, "If I do thus and so, what will happen to me?" We tried only to deal with completed transactions. It was not an invariable rule, however. We sometimes advised, where questions were simple and plain. We also sometimes refused to give advice where questions were exceedingly complicated and we were convinced we did not have all the facts; but generally the policy of the Bureau is and must be a policy of helpfulness to the taxpayers who have honest inquiries as to their liabilities.

You know that we even go to the extent of having deputy collectors in the field to assist people to make out their tax returns and to answer their questions. Now, every question they answer is, you might say, in one sense a ruling; but it is not a ruling, of course, in the sense that "formal ruling" is used. This was not a formal ruling and was not taken up with the Commissioner.

Mr. TREADWAY. Is the Bureau still adhering to its so-called established policy of not complying with requests by the ordinary taxpayers of the country for rulings on prospective transactions?

Mr. JACKSON. I have not been in the Bureau for some time, and I think that question would have to be addressed to others. I think Mr. Magill's letter of yesterday answered it, but I would rather not discuss the present policy of the Bureau.

Mr. TREADWAY. His letter refers only to completed transactions.

Senator HARRISON. Will you permit a question at that point, Mr. Treadway?

Mr. TREADWAY. Certainly?

The CHAIRMAN. Senator Harrison.

Senator HARRISON. It is my recollection, though I am not sure that when Senator Couzens and the Dodge interests were negotiating a trade with reference to Ford stock, before it was consummated they took it up with the Commissioner, Mr. Roper, as I recall, and that an opinion, not a formal one, was rendered after which they went ahead and contracted the sales of stock and so forth. I recall that came out in the trial of the cases.

Mr. JACKSON. Yes. And that illustrates the great difficulty with rulings, that they do not bind anybody. Even the Commissioner himself is not bound by his own rulings, and the greatest difficulty with making rulings, particularly prospective rulings—and it applies even to rulings as to conditions or transactions that are closed—is that you think you have all of the facts, but some time later you learn additional facts about that taxpayer's affairs. Then you will find you made a ruling on inadequate information. Frequently these

rulings are reversed, and the Board of Tax Appeals, the courts, and even the Commissioner himself do not consider themselves bound by these rulings. They are in the nature of advice, giving the taxpayer the best help that you can.

The CHAIRMAN. Mr. Treadway, will you yield just a moment?

Mr. TREADWAY. Certainly.

The CHAIRMAN. Do you differentiate between a "ruling" and an "opinion" in matters of that nature?

Mr. JACKSON. It is perhaps not a very definite distinction. In a sense any instruction or advice that you give to a taxpayer may be called a ruling, but only those things which are arrived at with some formality, passed on by the Commissioner, are properly and technically rulings.

There was no ruling in Mrs. Roosevelt's case in that technical sense.

The CHAIRMAN. I was thinking that perhaps you ought not to make a ruling without first having all the facts. You have mentioned the possibility of giving an opinion in the absence of some of the facts that might later develop.

Mr. JACKSON. You see you never know when you have all of the facts, because the taxpayer himself comes and tells you his facts. If you have a lawsuit there are two sides, each one bringing out the facts, but the taxpayer comes and tells you, and he does not think that some of these things are important to his tax question, most of them. Few of them really try to mislead us, but they think that things are not important or having obtained your opinion they go back and make a change in their plans or way of doing business, which they think comes within your opinion, but it does not. It is difficult to know when you have all the facts.

Mr. VINSON. Will you yield, Mr. Treadway?

Mr. TREADWAY. Certainly.

Mr. VINSON. Would you be able to give us an estimate as to the number of opinions that the Bureau gives to taxpayers annually?

Mr. JACKSON. I really could not do that. They would run a way into the thousands. Of formal rulings, you get a great many.

Mr. TREADWAY. Are those on prospective matters or completed transactions?

Mr. JACKSON. Mainly on closed transactions.

Mr. VINSON. In regard to the question of whether it was prospective or not, your letter written to Mr. Doughton on July 14, 1937, states that Mrs. Roosevelt had voluntarily disclosed the full transaction to the Treasury.

Mr. JACKSON. Yes.

Mr. VINSON. That was done before she performed any part of the broadcasting contract?

Mr. JACKSON. I would not be able to tell you that, Mr. Vinson. I do not recall how those dates were, but I rather think that it was before the broadcasts began, but after the contract had been entered into.

Mr. VINSON. If the contract had not been entered into, and the opinion to her had been different from what it was, then all she would have had to do was not to donate her services for the broadcast?

Mr. JACKSON. I think she had obligated herself to deliver the lectures. She had undertaken to deliver them, by the contract.

Mr. VINSON. She had agreed to do it under the terms of the contract but there was nothing in the contract as I recall that would indicate that she was expected to pay for the opportunity of making the broadcast.

Mr. JACKSON. That is true.

Mr. VINSON. That is effect would occur if she were called upon to pay the tax upon the moneys that went to the charity.

Senator WALSH. Mr. Treadway, may I ask a question?

Mr. TREADWAY. Certainly.

The CHAIRMAN. Senator Walsh.

Senator WALSH. Was the opinion which you gave to Mrs. Roosevelt written or oral?

Mr. JACKSON. It was not given as a written opinion.

Senator WALSH. I was merely an oral opinion?

Mr. JACKSON. We got out our own memorandum in the office, but that was not sent to her. She was simply advised that her income would not include the amounts paid to the charity under that contract. There was no written opinion ever sent to her. It was not a formal ruling in any sense of the word.

Mr. TREADWAY. Mr. Chairman, for the sake of the record, I would like to read a ruling of Commissioner Blair, dated December 21, 1922, known as "Mimeograph 3040", which relates to contracts in which third parties have interests:

It appears that there has been some misunderstanding relative to the proper application of the ruling contained in A. R. M. 177 (Committee on Appeals and Review Memorandum) in connection with cases in which there are contracts for the benefit of third parties. The cases which most frequently arise are:

The second reference in that ruling is as follows:

2. Cases in which one person contracts to perform services for a second person, and it is agreed that the remuneration therefor shall be paid to a third party. The receipt of the third party must be held to be constructive receipt by the person performing the services.

Income, whether it is derived from labor, from the use of capital, or from the sale of capital assets, is in each case income, and the same rules with regard to constructive receipt apply in all cases.

The ruling as above set forth represents the position which this office has consistently held.

It will be noted that no exception is made where the third party is a charity.

Now, let me read into the record the applicable provisions of section 23 (o) of the revenue act, limiting the deduction that may be taken for charitable contributions to 15 percent of the taxpayer's net income. Section 23 of the Revenue Act of 1934 begins:

In computing net income there shall be allowed as deductions:

Coming to subparagraph (o) we read:

(o) *Charitable and other contributions.*—In the case of an individual, contributions or gifts made within the taxable year to or for the use of:

Going down to the second paragraph we read, in part:

(2) a corporation or trust or community chest, fund, or foundation, organized and operated exclusively for * * * charitable * * * purposes.

And so forth.

Then at the end of the paragraph we find this limitation:

to an amount which in all the above cases combined does not exceed 15 per centum of the taxpayers' net income as computed without the benefit of this subsection.

Now, Mr. Jackson, I would be glad, and I am sure we all would, to have you reconcile your ruling in Mrs. Roosevelt's case with the previous ruling by Commissioner Blair which I quoted, and with the provisions of section 23 (o) of the Revenue Act of 1934.

Mr. JACKSON. In the first place, Mr. Treadway, let me say to you that it would not bother me in the least if it were inconsistent, because there is not a day goes by that there are not inconsistent rulings made in the Bureau of Internal Revenue, and have to be, or rulings that appear inconsistent when you apply them to different statements of facts.

The ruling of Commissioner Blair as to earned income not being assignable to a third party without payment of the tax is applied always where an assignment is made—for example, if you did some work and directed that the proceeds be turned over to Mr. Crowther, it would be your income. It would be held on the fact of it that it was constructively yours. It might be income to both of you. If Mr. Crowther were a charitable institution and you spoke, and by reason of your efforts some income went to charity, it is never held that that rule applies, so far as I know. In no instance have I known of the rule which you have read applying.

Mr. TREADWAY. I have correctly quoted it, have I not?

Mr. JACKSON. I think there is no doubt about that. I did not follow it, but I have no doubt at all.

Mr. VINSON. It is a constructive receipt.

Mr. JACKSON. I have not known of that rule applying to a donation to charity. As I have said the line is not always easy to draw, and your inquiry gets down largely to a matter of good faith. If it was a good faith donation of services to help charity, we never tried to interfere with it. If it was evasion, it was interfered with.

Senator WALSH. Mr. Jackson, I know of a case where the Governor of a State gave his salary to charity, during the term of his office, which he publicly announced. Would he or a Member of Congress who did the same thing have to include that salary in his income tax return?

Mr. JACKSON. I certainly think he would.

Mr. VINSON. No, not as a State officer. It would be exempt.

Mr. JACKSON. Of course that is a different question, but as for the assignment of it, you may not assign, and I am limiting this to the question of assignment—you may not assign income which is yours for a service of that kind. If Mrs. Roosevelt had for one moment the ownership of any money as the result of this transaction, that would be her income. The Governor's salary was his.

Senator WALSH. Let me give you two other cases. Public men often do a good deal of public speaking. Is it possible for them to assign the honorariums of the earnings that they get from that public speaking to charitable or religious purposes and not include it in their return?

Mr. JACKSON. That raises the same question, the question of whether it becomes the property of the public man. If he goes and makes a speech and receives a check and endorses that check over to a charity, it is his income, in my opinion. I do not know, the Bureau may not agree with me.

Senator WALSH. So that if he permits the agency that is to pay for this lecture to give it to charity, he is exempt from including it in his income-tax return?

Mr. JACKSON. Yes; if he should do as Mrs. Roosevelt did, say "I do not make a habit of speaking for money, but I would be glad to come up there and speak for your association, the hospital needs some help, if you want to do something for the hospital, or you give what you would give to me to the hospital", he could do it and he would not be taxed.

Senator WALSH. One other case and then that will answer all my questions. A wealthy man receives a large salary from a corporation. He makes a contract with this corporation that they pay over 10, 15, or 25 percent of that salary for charitable purposes each year. Would he have to account for that in his income?

Mr. JACKSON. I believe he would. I would so rule if I were ruling.

Senator WALSH. The 15-percent regulation would apply to him?

Mr. JACKSON. It would apply to him.

Senator WALSH. Very well.

Mr. JACKSON. He has not donated his services to the charity. He has entered into the employment wholly apart from the charitable motive. He is accumulating his own income. He is plainly trying to avoid the 15-percent limitation.

Now this question becomes a somewhat technical one, and depends on the question of whether it becomes your income. If it does, the 15 percent limitation applies. If it does not become your income, the 15 percent limitation does not apply, because it only applies to your income.

Senator WALSH. I have no trouble about the sincerity of purpose of the ruling, and also of the good intentions of Mrs. Roosevelt, but I am interested to know what if any rulings might follow this as a precedent.

Mr. JACKSON. It cannot be followed very far. That is, this cannot affect a very large volume of income. In the first place the number of people who are giving so much of their time or effort to charity that it exceeds 15 percent of their income is not a very overwhelming number. This could only be of any importance providing a person's work for charity exceeded 15 percent, and then there cannot be the evasions which have been indicated as being feared, because it is a very strictly limited rule, which permits donated services and benefit performances, with which we are all familiar, for charity.

Mr. TREADWAY. Did I understand you to say that the fact that rulings were inconsistent would not trouble you at all? How are we going to get anywhere and have any consistency?

Mr. JACKSON. We do not.

Mr. TREADWAY. Oh, we do not?

Mr. JACKSON. That is the trouble with the income-tax law, Mr. Treadway.

Mr. TREADWAY. Would it not be desirable then to clarify the law and find out where we are on donations to charity?

Mr. JACKSON. I spent a good deal of time in the Treasury trying to work out a system by which authoritative rulings could be given, and the Treasury officials are carrying on that work at the present time to set up and advise them of some system which they can devise by which rulings can be made which will be final, but it is a very complicated and difficult question to make rulings of that sort.

Mr. TREADWAY. We are engaged in an effort to plug tax loopholes, and if through charitable contributions beyond the scope of the 15

percent limitation a loophole exists, why should not definite, clarifying language be written into the law, if it is possible to do so?

Mr. JACKSON. That is fine as an ideal, Mr. Treadway, and I hope some day it will be achieved, although I do not expect to live to see it.

Mr. VINSON. Will the gentleman yield?

Mr. TREADWAY. Certainly.

Mr. VINSON. It seems to me that the trouble about setting up a hard and fast rule is that the Bureau does not have the last word.

Mr. JACKSON. Of course, we have not.

Mr. VINSON. You have the Board of Tax Appeals, you have the district courts, you have the circuit courts of appeal, and you have the Supreme Court.

Mr. JACKSON. I was going to point out the difficulty there is in having any consistency in the action of the Bureau. There was a case that arose involving the taxability of trusts, whether they were taxable to the beneficiary or to the trustee. I think I am stating this correctly. If I am not, you correct me, because I have been away from it for some time. The Bureau ruled that they were taxable to the beneficiary, I believe. The circuit court of appeals reversed it and held that you must tax it to the trustee, so the Bureau went out to collect taxes from people that it had not taxed before, and to refund taxes to beneficiaries from whom it had collected. The Supreme Court refused to take that case. Later they took a similar case, reversed the circuit court of appeals, and the Bureau had to go out and sue the people to whom it had made refunds, to recover those refunds back, and it had to make refunds to people that it had been demanding pay the tax. Now, you cannot have consistency if you cannot have the last word on it.

Mr. TREADWAY. You evidently had the last word in this case, did you not?

Mr. JACKSON. No; there is a new General Counsel, and he can reverse our opinion without the slightest difficulty.

Mr. TREADWAY. So you think it is practically impossible, even with the expert draftsmen such as Mr. Beaman and Mr. Kent and Mr. Magill—you do not think it is possible for them to write language clarifying the law and saying where the line is to be drawn with respect to charitable contributions?

Mr. JACKSON. I think it is exceedingly difficult. It is exceedingly difficult sometimes when a question is put up to you to determine just what is an educational or charitable institution. I have in mind an educational or charitable institution that wanted an exemption. It appeared that while they were carrying on educational work unquestionably, it was largely research work for the industries in which the gentlemen who made the contributions were interested. It is a pretty hard thing to draw the line. They were exempted in that particular case, but it was hard to draw the line.

Mr. TREADWAY. You recognize there is a very distinct inconsistency, do you not, between your ruling in this particular case and section 23 (o)?

Mr. JACKSON. No; I think they are absolutely consistent.

Mr. TREADWAY. You think that 23 (o) is being lived up to in your ruling in Mrs. Roosevelt's case?

Mr. JACKSON. I think so. In what way is it not?

Mr. TREADWAY. It strikes me that the language is very plain that beyond the 15 percent deduction for charitable gifts there is a taxable income, whether the money actually passes into her hands or otherwise.

Mr. JACKSON. If it became her income then the 15 percent limitation applies, but if she declined to take it the case would be different.

Mr. TREADWAY. What about the ruling of Commissioner Blair?

Mr. JACKSON. The Blair decision does not refer to charity. There is nothing said in there about the charitable relationship.

Mr. TREADWAY. I do not see how it differs. No exception is made of contracts where the third party beneficiary is a charity. But nevertheless let me proceed, because I realize that others may want to ask you questions.

Senator HARRISON. I thought you said you were not a lawyer?

Mr. TREADWAY. A lawyer? No; I do not pretend to be a lawyer.

Mr. JACKSON. He is as hard to convince as one. [Laughter.]

Mr. TREADWAY. Mr. Jackson, I understand that you place Mrs. Roosevelt's contribution in the category of a benefit performance.

Mr. JACKSON. I do.

Mr. TREADWAY. Is there not a very marked distinction between a contract being entered into for a period of some weeks to perform certain tasks or do certain things and the professional appearance of a concert or opera singer, for instance, or a prize fighter or anybody that will attract attention to a benefit performance? For instance, there was a ball game played at Washington a few weeks ago by star performers of both leagues. I had the pleasure of sitting right near the President on that occasion, I had one of the best seats in the place, I enjoyed it tremendously and he did too. Now, do you put that benefit performance for charity by the ball players of the country in the same classification as Mrs. Roosevelt's contract to broadcast weekly for 10 weeks? Those who make benefit performances do not ordinarily enter into contracts providing that the proceeds shall go to a particular charity.

Mr. JACKSON. I see no essential difference. Of course there is a difference between radio and any performance where you observe the performers. Under the radio system of broadcasting people do not pay to hear you, somebody pays you to talk. Under the benefit lecture, the audience pays to hear you, but the principle is the same, and I see no difference whether you give one benefit performance or 10 in a series. In fact the precedent which I pointed out to you in a ruling made in 1924, which surely was not arranged for this purpose, had a series of lectures by an eminent foreigner, and then after the first series had been successful he gave a second series, I do not recall how many, but 10 or 15. It was not considered that the fact that there were series of performances affected the rule that would apply.

Mr. TREADWAY. So that you would rate that contract, which definitely stated that \$3,000 was to be paid to the American Friends Service Committee, in the same classification as 20 or 30 men under pay, continually under pay, coming here and devoting one day to an exhibition for charity? Do you classify those in the same way?

Mr. JACKSON. I do not think the 20 or 30 men have anything to do with it, because if the 20 or 30 men were under pay, they were not donating their services. It was the ball club or corporation, I suppose, that made the donation.

Mr. TREADWAY. But there was no contract entered into in that instance, so far as anybody knows.

Mr. JACKSON. Suppose they did not donate the services, or did not turn over the money to the charity after they had promised to, do you not think the courts would enforce a contract?

Mr. TREADWAY. I do not know. I suppose they might impress the funds with a trust.

Mr. JACKSON. I do.

Mr. TREADWAY. I think the Government would require payment of the tax, of course, but that is not quite a fair supposition.

Mr. JACKSON. No, not the tax.

Mr. TREADWAY. That is not quite a fair supposition in the fact that we recognize that such an organization as the one of which Mr. Griffith is the head is an honorable one and it would not break a contract or agreement.

Mr. JACKSON. I assume they would not.

Mr. TREADWAY. I mean they would not refuse to turn over their receipts to charity.

Mr. JACKSON. But if they did, I have no doubt that they would be compelled to live up to their representation, and that there is a contract.

The point I am making is that Mrs. Roosevelt had a contract. So do they when they announce that they are going to give a certain percentage of proceeds to charity.

Mr. TREADWAY. Let me ask just one other question in that same connection. It has not actually come up in these hearings, and we have no evidence on it. We do have evidence as to the contract of the broadcasting company with Mrs. Roosevelt, but we have no evidence as to the remuneration for this daily paragraph that is syndicated throughout the country, and which I think is entitled "My Day."

Mr. JACKSON. I know nothing about that. I do not know the basis on which it is done, or whether it is taxed.

Mr. TREADWAY. You do not know whether that is also donated to charity?

Mr. JACKSON. I have no information on it whatsoever.

Mr. TREADWAY. Does not the arrangement which Mrs. Roosevelt entered into nullify section 23 (o) limiting the deductions for contributions to charity to 15 percent?

Mr. JACKSON. Certainly it does not nullify it.

Mr. TREADWAY. It does not nullify it?

Mr. JACKSON. No, sir.

Mr. TREADWAY. Section 23 (o) is still good law then, is it?

Mr. JACKSON. Section 23 (o) is still good law. It applies to people who receive income.

Mr. TREADWAY. But it need not be lived up to, under rulings of the Department in particular cases if they see fit to be inconsistent, is that about the attitude?

Mr. JACKSON. No it is not the attitude at all, Mr. Treadway. I have no objection to your stating that as the attitude, if that is your thought about it.

Mr. TREADWAY. I draw that conclusion from your statement. I cannot do otherwise.

Mr. JACKSON. But section 23 (o) says that it is limited to 15 percent of the income of the taxpayer. In this case the taxpayer did not have

any income from these broadcasts. The 15 percent applies to income received.

Mr. TREADWAY. Irrespective of whether the income is paid to a third person?

Mr. JACKSON. The income was paid to charity. I am not talking about a third person, I am talking about a charity.

Mr. TREADWAY. But was it not paid to a third party, which in this case happened to be a charity?

Mr. JACKSON. It was paid to a charity, yes.

Mr. TREADWAY. Where do you draw the distinction then in the Blair decision, which makes no exception where the third party is a charity?

Mr. JACKSON. It is very easy to draw it in practice in some cases. Some cases are very difficult.

Mr. TREADWAY. There is inconsistency, is there not?

Mr. JACKSON. We have had this attempted: A man is working for a corporation at \$15,000 a year, we will say, and he does not like the surtax, so he says, "Pay \$5,000 of that to my wife and \$5,000 to my daughter, and my salary is only \$5,000, and we will make three returns." Now, he cannot get away with it, because it is his income in his profession, and in any case where the section or the ruling is being used to effect an evasion of tax it is stopped, if the Bureau can find it out and do it.

Mr. TREADWAY. The arrangement entered into by Mrs. Roosevelt was such that the Government did not get a tax from that charitable contribution of hers?

Mr. JACKSON. The Government got nothing from that charitable contribution; that is right.

Mr. TREADWAY. Of course Miss Nancy Cook must have reported her share of that commission that she got from Mr. Lasker, did she not?

Mr. JACKSON. I know nothing about that, and that provision was not in the 1934 contract. I have never passed on it and do not know the facts about it. Any payments to Miss Cook were not involved in the question passed on by the Bureau of Internal Revenue.

Mr. TREADWAY. The photostatic copy of the contract that we saw showed that Mr. Lasker received \$1,000 for making the contract, from each one of the broadcasts, and that Miss Cook got \$400 of that \$1,000. Did she not?

Mr. JACKSON. If I am correct, I think you have a later contract than the one that was submitted to the Bureau. The ruling that was made or the advice that was given did not relate at all to any payment to any individual.

Mr. VINSON. Will the gentleman yield?

Mr. TREADWAY. Certainly.

Mr. VINSON. The contract that was submitted and is a part of the record had no reference to the transaction between Mr. Lasker and Miss Cook.

Mr. TREADWAY. I thought it did.

Mr. VINSON. No. I think you will find that in his testimony Mr. Fish produced a photostatic copy of a check from Mr. Lasker to Miss Cook for \$400.

Mr. TREADWAY. Through an interchange of correspondence?

Mr. VINSON. That was between Mr. Lasker and Miss Cook, but the contract shows for itself. It is right here.

Mr. JACKSON. I have not examined what you have before you.

Mr. TREADWAY. There is no need of arguing that, as we are in agreement with respect to that point, unless Mr. Vinson desires to say something further on the subject. It is all right so far as I am concerned.

Mr. JACKSON. I am only discussing the one we passed on, which had no reference to another.

Mr. TREADWAY. That was just an incidental reference to Mr. Lasker and Miss Cook. I would like to ask you this question, though, in that connection: In view of the ruling you gave Mrs. Roosevelt, what is there to prevent any wealthy person making a very substantial donation to charity through similar methods and avoiding the 15 percent limitation of section 23 (o)?

Mr. JACKSON. Any person, wealthy or not wealthy, can do what Mrs. Roosevelt did without a tax. That is, her rule applies. If Mr. Morgan wants to broadcast for charity he can do it on the same terms Mrs. Roosevelt did.

Mr. TREADWAY. Then you would draw a very marked distinction between the broadcasting method of earning income and cutting coupons for income?

Mr. JACKSON. Yes, sir. You cannot cut coupons and turn them over to a charity and escape this. That would not do. That is your income.

Mr. TREADWAY. Take another illustration. There are records of many salaries running \$50,000 or more, that are supposed to be earned under contract exactly as Mrs. Roosevelt's was. You would, would you not, rate any part of that above the 15 percent as taxable, even though the recipient, the man earning it, did not touch a dollar of the money derived from the contract, but said to John Jones, the man employing him, "You pay half of my salary to a charitable institution"?

Mr. JACKSON. You cannot assign your salary. The Bureau never has permitted the assignment of salary.

Mr. TREADWAY. What is the difference in the way you earn the money, Mr. Jackson?

Mr. JACKSON. It makes a good deal of difference.

Mr. TREADWAY. I am not saying that there may not be a difference in income, I do not mean that, coupon cutting and that sort of thing, but you have one way of earning a salary, somebody else may have another way of earning something, and if we enter into a contract, what difference does it make as to the source of that income?

Mr. JACKSON. In one case it is obvious that the man who works for the corporation for a salary is not actuated in doing that by the charitable motive. His basis is to earn his living. Now if he wants to carve a part of that income and turn it over to charity, free of the limitations of section 23, he is not performing that service as a donation to charity, he is performing it to earn money. He is dividing that money between himself and charity. In the case of Mrs. Roosevelt and other benefit performances, the persons who are rendering the service upon which the performance is based decline to do it for income. They are not working for their own advantage. They are donating their services. This man that you mention with his

salary has not donated his services. He is turning over a part of his salary.

Mr. TREADWAY. Are you not questioning his motives somewhat?

Mr. JACKSON. No, not at all.

Mr. TREADWAY. I think you are, because we may assume a case in which a man realizes that he is not worth \$50,000 a year to anybody.

Mr. JACKSON. No man ever realized that, I think. I cannot assume it.

Mr. TREADWAY. Well, it gets beyond my conception, I realize that, but of course we all know there are a great many salaries in excess of that sum, are there not?

Mr. JACKSON. Yes. I meant that I could not imagine any man that would admit that he was not worth it, if he got a chance to receive that salary.

Mr. TREADWAY. Oh, there are a lot of modest people. Of course, there are some conceited ones, but there are also a lot of modest people.

Mr. JACKSON. We do not see them at the Bureau.

Mr. TREADWAY. In my particular line of business the man that thought he was worth \$50,000 a year to a hotel system would be somewhat conceited. He might be a mighty good hotel manager but he would be somewhat conceited. Getting back to the point that I think you are questioning the man's motives, let us assume that he himself realizes that he is not worth \$50,000 to a corporation but he can get that salary. Then the man says to himself, "All right, I will take what I am worth, I will take half of that, I will take \$25,000, and I will devote the other \$25,000 to charity." Why is not that a perfectly fair supposition?

Mr. JACKSON. I never had that kind of case come up, Mr. Treadway, and I would suspect it. I would frankly suspect that that man was trying to avoid the tax law in his return.

Mr. TREADWAY. I will close now, Mr. Jackson, as you have been very kind. There are of course several other matters I might interrogate you about, particularly the applicability of the Supreme Court's decision in the case of *Lucas v. Earl* (281 U. S. 111), in which it was held that the income tax could not be escaped by "anticipatory arrangements however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it."

Let me just ask this, though, and put it in as a matter of information: Doesn't the arrangement entered into by Mrs. Roosevelt come under the category of a "clever little scheme", to use the President's own phrase, for the purpose of enabling Mrs. Roosevelt to take credit for a gift to charity without payment of income tax on the earnings in question?

Mr. JACKSON. That calls for her motive. In my opinion it does not. In my opinion this woman did not want to evade her tax, or she would not have come near the Bureau. In my opinion, and it is only my opinion, she did not want to commercialize her position by profiting from these things, but she did want to help these charities, and I think her example is a noble example. I would not say that it was a "clever little scheme." I think she has been a fine influence in this country.

Mr. TREADWAY. I agree very largely to that, but of course it is her position as Mrs. Franklin D. Roosevelt, wife of the President of the

United States, that enables her to make this donation. Except for the fact that her husband is the President, her services would not be worth \$3,000 per broadcast for charity.

Mr. JACKSON. No, and that is why she could properly distinguish, and the Bureau could properly distinguish, between that and the case of a man who earns a salary. There is an ample reason in good faith why she does not want to capitalize it for her own advantage.

Mr. TREADWAY. Then you are positive that these inconsistencies that are troubling us are perfectly proper and right, and that undoubtedly inconsistencies of the same kind will continue to arise, wherein the Bureau of Internal Revenue will bring in rulings contrary to the letter and purpose of the law, which you say we cannot write in a way to make it effective?

Mr. JACKSON. I would like to be agreeable, Mr. Treadway, but I cannot agree with you that you have pointed out any inconsistencies in the ruling.

Mr. TREADWAY. You cannot follow me?

Mr. JACKSON. And I think you will continue to have confusion in the income tax law as long as we have it.

Mr. TREADWAY. I agree to that, certainly. Thank you, Mr. Chairman and Mr. Jackson.

The CHAIRMAN. We thank you Mr. Jackson for your appearance and the statement of facts that you have given to the committee.

(Thereupon, at 11:30 a. m., the committee concluded its open session and went immediately into executive session.)