



88-SBE-006

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
) No. 86A-1821-KP
ROBERT V. FIKE)

For Appellant: Robert V. Fike
 in pro. per.
For Respondent: Israel Rogers
 Supervising Counsel

O P I N I O N

This appeal is made pursuant to section 18593¹/₁ of the Revenue and Taxation Code ~~from the~~ action of the Franchise Tax Board on the protest of Robert V. Fike against proposed assessments of additional personal income tax and penalties in the amounts of \$490.01 and \$449.22 for the years 1983 and 1984, respectively.

¹/ Unless otherwise specified, all section references are to sections of the Revenue **and** Taxation Code as in effect for the years in issue.

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The issue presented by this appeal is whether **appellant^{2/}** is entitled to charitable deductions **for** the years at issue for donations allegedly made to the International Headquarters **of the Universal Life Church, Inc., Modesto, California (ULC-Modesto).**

Appellant and his wife filed joint income tax returns for 1983 and 1984 wherein they claimed deductions for contributions allegedly made to ULC-Modesto. As the Franchise Tax Board (**FTB**) was aware of the use **of the Universal Life Church (ULC)** as a tax avoidance scheme, it requested specific verification of the alleged donations. At his **protest** hearing, appellant presented copies of two cashier's checks through which the donations were allegedly made. Although the 1983 check was made out to the "Universal Life Church," it did not show ULC-Modesto's endorsement. Consequently, the FTB assumed that the "donation" was given to a so-called "charter chapter" of the ULC. A charter chapter is organized and operated by one **or several individuals** as a tax avoidance **scheme,^{3/}** and contributions thereto regularly have been held non-deductible by the federal courts and this board on the basis that the charter chapters do not qualify for tax-exempt status. (See, e.g., Burwell v. Commissioner, 89 T.C. No. 41 (1987); Appeal of Jared C. Davis, Cal. St. Bd. of Equal., May 8, 1985; Appeal of John R. Sherriff, Cal. St. Bd. of Equal., Dec. 13, 1983.) The 1984 cashier's check was **made** out to the "Universal Life Church, Inc.," and showed ULC-Modesto's endorsement.

ULC-Modesto received its tax-exempt status as a religious organization on April 13, 1976. During the following years, however, ULC-Modesto engaged in various activities which called into question whether the church had been organized and operated solely for **religious purposes**. Among its other activities, ULC-Modesto circulated newsletters emphasizing methods of maximizing the **tax** benefits of the **ULC's "ministers."** ULC-Modesto also operated a **"receipts and disbursements"** fund. This fund

2/ While Mr. and Mrs. Fike filed joint tax returns **for** the years at issue, only Mr. Fike has appealed the action of the Franchise Tax Board. Hereinafter, Mr. Fike shall be referred **to** as appellant.

3/ For a complete description of **the organization** and operation of **charter chapters** of the **ULC**, see Burwell v. Commissioner, 89 T.C. No. 41 (1987).

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allowed a "minister" to send a check to ULC-Modesto, which was deposited and subsequently distributed per the instructions of the "minister." There was no attempt by ULC-Modesto to insure that the disbursed funds went for qualified expenditures so as to allow their deduction on the "minister's" individual tax return. Rather, the "minister" would take a deduction for his monthly "donation" to ULC-Modesto, and, typically, have ULC-Modesto pay all of the "minister's" monthly expenses, such as housing and transportation expenses that would otherwise not be deductible.⁵¹

Upon review of this evidence, the FTB determined that appellant did not show the 1983 "contribution" went to a qualified charitable organization, and further determined that appellant failed to prove that he relinquished dominion and control over the funds for either of the years at issue. Consequently, the FTB denied the claimed deductions and issued the present assessments, which included negligence penalties. Appellant's subsequent protest **was** denied, and this appeal followed.

For tax years beginning on or after January 1, 1983, California conformed, for the most part, its personal income tax laws with regard to deductions to the Internal Revenue Code. (Rev. and Tax. Code, **§ 17201.**) As relates to the case at hand, section 170, subsection (c), of the Internal Revenue Code states that a contribution to an organization will be deductible if the group to which the contribution is given is organized and operated exclusively for religious purposes. To be considered an organization that is operated exclusively for religious purposes, the organization must meet the requirements of the Internal **Revenue Code, section 501(c)(3)**. (See also Appeals of Clifford A. and Dorothy M. Nelson, Cal. St. Bd. of Equal., Nov. 14, 1984.) Due to California's conformity

4/ Due to the receipts and disbursements fund and the abnormal amount of tax advice given by the ULC-Modesto to its "charter chapters," the federal court in Universal Life Church, Inc. v. United States, 13 Cl. Ct. 567 (1987), **agreed** with the Internal Revenue Service's (IRS) revocation of ULC-Modesto's tax-exempt status. In reaching its conclusion, the court stated that "[s]ubstantial non-exempt purposes of giving tax advice not incidental to religious purposes and promoting tax avoidance have been demonstrated." (Universal Life Church, Inc. v. United States, **supra**, 13 Cl. Ct. at 584.)

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to federal law on this point, we find that the determinations of the federal courts construing the controlling federal statutes are highly persuasive. (See Meanley v. McColgan, 49 Cal.App.2d 203 [121 P.2d 451 (1942)].) Consequently, we adopt the findings of the federal courts on this point.

It is well settled that charter chapters of the ULC do not enjoy tax-exempt status. (See Burwell v. Commissioner, *supra*.) Furthermore, the IRS has revoked the tax-exempt status of ULC-Modesto as of 1984; a revocation the IRS considers to be retroactive. (See Burwell v. Commissioner, *supra*, 89 T.C. at fn. 14.) The IRS revocation has recently been up-held in Universal Life Church, Inc. v. United States, 13 Cl. Ct. 567 (1987), wherein the court determined that ULC-Modesto's activities **were such** that the ULC did not meet the requirements of Internal Revenue Code, section 501, subsection (c)(3).

As neither "church" in question qualifies as a tax-exempt organization, no taxpayer may deduct any payment to either ULC-Modesto or any charter chapter of the ULC as a charitable contribution. Therefore, **appellant** is not entitled to either of the deductions in question. Furthermore, appellant has failed to argue or present evidence as to why the penalties in question should not apply. Consequently, we **must assume** that **appellant** acquiesces to the imposition of the subject penalties. Accordingly, the action of the Franchise Tax Board in this matter must be sustained.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good **cause** appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Robert V. Fike against proposed assessments of additional **personal income** tax and penalties in the amounts of \$490.01, and \$449.22 for the years 1983, and 1984, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of April, 1988, by the State Board of Equalization, with Board Members Mr. Dronenburg, Mr. Collis, and Mr. Davies present.

Ernest J. Dronenburg, Jr., Chairman

Conway H. Collis, Member

John Davies*, Member

_____, Member

_____, Member

*For Gray Davis, per Government Code section 7.9