

## **Deducting religious school tuition as a charitable contribution**

**Q.** My child attends a religious-oriented school. May I deduct my tuition payments as a charitable contribution?

**A.** No. This issue went all the way to the Ninth Circuit Court of Appeals a few months back and the court ruled against the parents.

### **Background**

In the Ninth Circuit case, the parents had a child enrolled in a yeshiva school. They calculated that 55 percent of their child's school day was devoted to religious instruction and 45 percent of the day was devoted to secular education.

The parents deducted 55 percent of the cost of tuition as a gift to the yeshiva. According to the parents, they were entitled to this deduction because their child received only religious benefits for this portion of the tuition.

The IRS disagreed. It countered that the payments were not contributions to a charity but personal tuition, which is not deductible. In exchange for paying tuition, their child received an education.

The parents filed suit in the Tax Court and lost. They appealed to the Ninth Circuit.

### **Entanglement with religion**

The Ninth Circuit rejected the parents' arguments on three grounds:

- (1) Nothing in the Internal Revenue Code authorized a deduction for tuition as a charitable contribution;
- (2) To permit the deduction would begin a slippery slope of expanding the charitable contribution deduction beyond Congress' intent; and
- (3) To permit the deduction would entangle the IRS and the government in affairs of beliefs of religious faiths and violate separation of church and state.

The Ninth Circuit was very concerned with the third reason. If it allowed the parents to deduct the tuition as a charitable contribution, the IRS would have to determine what part of the school day was devoted to secular education and what part of the day was spent in religious education.

The IRS could only go about this inquiry, the court found, by excessively involving itself in the affairs of a religious faith. The court questioned how the IRS would measure the amount of religious instruction. Anyway the IRS tried, the court found, would violate the Constitutional guarantee of separation of church and state.

### **Other religious schools**

**The Ninth Circuit's decision is not limited to yeshiva schools. Tuition paid to any religious school cannot be characterized as a contribution to charity because the student receives something – education – in return for the tuition.**