

1954

# Marriner W. Merrill Family Foundation, Inc v. The State Tax Commission of Utah : Brief of Appellant

Utah Supreme Court

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Merrill and Merrill; Elias L. Day; Attorneys for Appellant;

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CASE NO. 8192

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**IN THE SUPREME COURT  
of the  
STATE OF UTAH**

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MARRINER W. MERRILL FAM-  
ILY FOUNDATION, INC.,

*Plaintiff,*

vs.

THE STATE TAX COMMISSION  
OF UTAH,

*Defendant.*

FILED  
JUL 23 1954

U.S. Supreme Court, U.S.

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**APPELLANT'S BRIEF**

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**ON WRIT OF CERTIORARI  
from**

**THE STATE TAX COMMISSION OF UTAH**

---

**MERRILL and MERRILL  
Residing at Pocatello, Idaho**

**ELIAS L. DAY  
Residing at Salt Lake City, Utah**

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*Attorneys for Appellant*

**MARRINER W. MERRILL FAMILY  
FOUNDATION, INC.**

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# IN THE SUPREME COURT of the STATE OF UTAH

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MARRINER W. MERRILL FAM-  
ILY FOUNDATION, INC.,

*Plaintiff,*

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THE STATE TAX COMMISSION  
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*Defendant.*

CASE NO.  
8192

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## APPELLANT'S BRIEF

---

ON WRIT OF CERTIORARI  
from  
THE STATE TAX COMMISSION OF UTAH

---

## STATEMENT OF FACTS

This Matter is before the Court on a Writ of Cer-  
tiorari.

The plaintiff, the Marriner W. Merrill Family Foun-  
dation, Inc., was duly and regularly incorporated under  
the Laws of the State of Utah as a non-profit organiza-

tion on September 7, 1950. Subsequent to this incorporation, the Corporation Franchise Tax Section of the State Tax Commission of Utah did, on or about October 24, 1950, assess against this corporation the minimum franchise tax in the amount of \$10.00.

The plaintiff filed a protest and petition with said Commissioner and requested a re-determination, which said petition culminated in a hearing before a legally constituted quorum of the Commission on the 13th day of August, 1953, in a proceeding entitled "IN THE MATTER OF THE CORPORATION FRANCHISE TAX HEARING OF MARRINER W. MERRILL FAMILY FOUNDATION, INC."

On April 1, 1954, the said Commission issued its Findings of Fact, Conclusions of Law, and Decision whereby the said Commission found that the Marriner W. Merrill Family Foundation, Inc. was a taxable corporation under Title 59, Chapter 13, Utah Code Annotated, 1953, that the Marriner W. Merrill Family Foundation, Inc. was not organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes and the net earnings can inure to a private shareholder or individual and therefore said corporation was adjudged to be a corporation which does not come within any of the exemptions provided in Title 59, Chapter 13, Section 4, Utah Code Annotated, 1953. As a result of this determination, the plaintiff filed its petition of Writ of Certiorari on April 28, 1954, with the Writ being made returnable May 18, 1954.

At the formal hearing before the State Tax Commissioner there was introduced in evidence the Affidavit of Incorporation (Tax Commissioner's Exhibit No. 1), the By-Laws of the Foundation, (Taxpayer's Exhibit "A"), and oral testimony.

The purpose of the Foundation, as set forth in the Affidavit of Incorporation, is as follows:

"\* \* \* for the purpose of receiving by gift, devise, bequest, or otherwise, money or credits, and other items of real and personal property, and to invest and reinvest the same and to apply the income therefrom, together with so much of the principal thereof as may be deemed necessary and advisable for loaning or otherwise advancing money and property, on such terms as the Board of Directors may determine, to any and all descendents and husbands or wives of such descendents of Marriner W. Merrill, whether or not such person is a member of said corporation, for the educational uses in any school, college, university, or special training institutions, in any part of the world and without in any way limiting or restricting the general purposes hereinbefore stated, to aid and assist financially or otherwise in the training of any member of the family, whether the same be a direct descendent or by marriage, in the acquiring of scholastic training and educational advancement in religious, literary, scientific, artistic, professional, vocational or smiliar branches of learning, conditioned only upon the control of the assets of said Corporation for the aforesaid uses thereof by the Directors of said Corporation; \* \* \*."

The By-Laws of the Foundation were admitted as Taxpayer's Exhibit "A" (T. 15). The portions specifically applicable to the question herein are:

Article One, Section Two, -

"Said Foundation shall receive and accept from any member or any other person, either by gift, devise, bequest, or otherwise, any money, credit, or other types of real or personal property, all of which shall be handled and managed by the Board of Directors as hereinafter recited and for the uses and purposes of this corporation:"

Article Four, Section Nine, -

"The Board of Directors may appoint a special committee with power to accept contributions and to act upon all applications of prospective students for loans or other assistance from the Foundation, and such committee's decision in such matters shall always be subject to the right of appeal of such applicant to the Board of Directors:"

Article Five, Section One, -

"In order to carry out the objective of the Foundation, the Board of Directors, or a committee appointed by it, may receive, invest and reinvest, all funds and property of the Foundation, and may loan or otherwise advance to any applicant for assistance such funds as may be deemed proper and adequate for the accomplishment of the purposes of said applicant and of this Foundation."

Article Five, Section Two, -

"Any member of the Marriner W. Merrill Family, either by blood or marriage, and whether

the same be a member of the Corporation or not, shall be entitled to borrow and receive from the Foundation such sums and amounts of money, and upon such terms, and at such rate of interest, as the Board of Directors may from time to time prescribe, which money, however, shall be used for the sole and exclusive purpose of assisting said applicant in attendance at such school, college, university, or special training institution, wherever located, and for the purpose of educational, religious, professional, scientific, literary, artistic, vocational, or similar branches of learning; provided, nevertheless, that said Board of Directors, or the committee appointed by it, shall at all times have complete power and discretion in determining whether the loan shall be made, and if made the amount, length of time, rate of interest, and other conditions of said loan, always bearing in mind the amount of funds for such purpose, the number of applicants, and the expense incident thereto, with the objective of equitably dividing available funds for the aid of all applicants.”

Article Five, Section Three, -

“Said Board may also in its discretion assist any applicant to borrow at any bank or trust company for any of the purposes recited in Section two hereof, and the officers of this Corporation shall have the power to endorse or sign with said applicant any note at any such bank or trust company for such purposes and pledge as security for the payment thereof such asset of said Foundation as it may deem advisable and make such requirements of said applicant as it may deem proper.”

The only oral testimony received at the hearing was that of A. L. Merrill, called as a witness on behalf of the

Foundation (T. 8-12). Mr. Merrill is the President of the Marriner W. Merrill Family Foundation, Inc. During his testimony it was stipulated (T. 10) "That to date hereof there has been contributed to said corporation by interested members the total sum of \$1,628.00. Two loans have been made to students for educational purposes: one to the grand-daughter of a sister of a wife of Marriner W. Merrill, but the grand-daughter, I understand, is not a descendent of any member of the family, for the purpose of studying nursing in Salt Lake City; and another loan to a great-grandson of Marriner W. Merrill for his education at the Utah State Agricultural College."

Mr. Merrill further testified (T. 10) that "The Affidavit is broad enough to permit the loaning of money to any descendent of a husband or a wife who subsequently married a member of the Merrill Family. This is so, even though such a person be not a descendent of Marriner W. Merrill."

On page 11 of the Transcript is found the following:

"MR. DAY: The beneficiary does not necessarily have to be a member of the corporation.

"MR. MERRILL: No, the beneficiaries are not members of that. They don't have to be members of the corporation, and in these instances are not members of the corporation.

“The money is donated with the understanding as provided in the Affidavit and By-Laws without any refund or return to the donors of any kind or character, or by way of interest or dividends or otherwise; and that money is used exclusively in the future for the purpose of loaning money to students within the qualifications mentioned to go to college in any part of the world. And the objective of the Foundation is to provide for educational development of individuals that the Board of Directors may determine are within the rights under the Affidavit to make the loan.

“I believe that is all.

“MR. ALLEN: Counsel for the Commission will stipulate to the statement with the exception of the limitation that donors who are participants in the Affidavit itself may receive benefits from the corporation.

“MR. MERRILL: I agree that there might be some instances where a donor might have a loan made to him, but he would have to pay it back just as anyone else. He would never receive it as a dividend or a refund of any amount he had ever paid.

“MR. DAY: That last statement, may we have it understood, is testimony under oath and not part of the stipulation.”

The issue involved is whether or not the Marriner W. Merrill Family Foundation, Inc. is an exempt corporation under the provisions of Section 59-13-4, Utah Code Annotated, 1953.

It is the position of the appellant that the Foundation is for the purpose of receiving gifts, devises, bequests, or other properties from any donor to be used for the purpose of loaning or otherwise advancing money or property on such terms as the Board of Directors might determine to any and all descendents and husbands or wives of such descendents of Marriner W. Merrill for educational uses in any school, college, university, or special training institution in any part of the world. The loans are not restricted to members of the corporation and there is no return to any donor, either of principal, or interest, or dividend. The Foundation is solely for educational and charitable uses and for no other purpose.

It is, therefore, claimed that this corporation is exempt under the laws of the State of Utah.

## POINT I.

THE MARRINER W. MERRILL FAMILY FOUNDATION, INC.  
IS EXEMPT AS A CORPORATION ORGANIZED AND  
OPERATED FOR CHARITABLE PURPOSES.

As an exemption from the Corporation Franchise Tax imposed by the State of Utah, Section 59-13-4, Utah Code Annotated, 1953, provides as follows:

“The following corporations are exempt from the provisions of this chapter, to wit:

“ \* \* \*

“(4) Corporations and any Community Chest, Fund or Foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the

prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual.”

It is submitted that the Marriner W. Merrill Family Foundation, Inc. is organized and carried on for charitable and educational purposes within the above statute.

This statute is an exact copy of Section 101 (6) Internal Revenue Code which exempts organizations from income tax under the Federal Income Tax Laws. This section of the Utah Code, as far as we have been able to determine, has not been construed by the Courts in any manner applicable herein. However, the Federal Statute has been, in numerous instances, considered by the Courts.

The best definition of charity in this regard is found in the case of *Bok vs. McCaughn*, 42 F. 2d 616. In this case, an association was formed to accept gifts and donations; and to, in turn, recognize and reward by payment of \$10,000.00 the person selected each year as the one whose act or service was most advantageous to the City of Philadelphia or its inhabitants.

The Court, on page 618, is quoted as follows:

“Charity, derived from the Latin Caritas, originally meant love. In the thirteenth chapter of First Corinthians the revised version uses the word “love in defining the third of the three cardinal virtues which, in King James’ version read “Faith, Hope and Charity.” It was with

similar emphasis on the motive which prompts action that Mr. Binney framed his approved definition of a charitable trust in his argument in the Girard will case: "Whatever is given for the love of God, or the love of your neighbor, in the catholic and universal sense, given from these motives and to these ends, free from the stain or taint of every consideration that is a personal, private, or selfish." *Vidal v. Girard's Executors*, 2 How. 128, 11 L. Ed. 205 (1844) which is quoted by the Supreme Court in *Ould v. Washington Hospital*, 95 U.S. 311, 24 L. Ed. 450. Charity means such unselfish things as are wont to be done by those who are animated by the virtue of love. Thus the Supreme Court of the United States, following Chancellor Kent, Lord Lyndhurst, and Lord Camden, has defined a charitable trust as "a gift to a general public use which extends to the poor as well as to the rich." *Perin v. Carey*, 24 How. 506, 16 L. Ed. 701 (1860). So, also, Mr. Justice Gray speaking for the Supreme Court of Massachusetts in *Jackson v. Phillips*, 14 Allen 556 (1867), declared a charitable gift to be one "for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government."

"It cannot be doubted that Mr. Bok's gift was a charitable gift as the word "charitable" is used and understood by courts and lawmaking bodies. What he did was done for the love of his neighbors in the community which he had adopted as his home. Every activity recognized by the awards that have been made is an activity for the promo-

tion of which a charitable trust might be created. A trust for popular education in music, or for making higher education accessible to the many, or for stimulating American patriotism by recalling the unselfish sacrifices of the fathers, or for the relief of human suffering through new and improved surgical methods, or for the encouragement of craftsmanship, or for the beautification of a city, would be a charitable trust tested by any of the definitions which the authorities supply. And if a trust for the promotion of any one of these interests would be a charitable trust, it follows that a foundation to promote all of them is a trust that partakes of the nature of each.”

It should be noted furthermore that charity is not confined to the financial aid of the poor or indigent, but may be devoted to increasing and fostering qualities of industry, loyalty, persistence or for the desire for education and general betterment of individuals as citizens. All of these are clearly for the public good and for the advancement and protection of society. A short definition of “charitable” in its legal sense in construing statutes of this type has been frequently set out as “some public benefit open to an indefinite number of persons.” Public benefits, however, cannot be given a narrow construction such as would confine it to cases where a person is taken off the State relief rolls, or where an orphan is taken out of a state orphan institution. Public benefit embraces a much wider and all inclusive meaning, and is set forth in the Bok case above. In the case of Harrison

v. Barker Annuity Fund, 90 F. 2d 286 (C.C.A.7.) the Court was dealing with a corporation primarily devoted to the granting of pensions to employees of a specified corporation. The Court says, on page 288:

“In the present cases neither the appellee nor the donor was a beneficiary or interested either directly or indirectly in the dissolved company. The persons to whom annuities were paid were those who had remained loyal in the service of the retired company and who had proved their steadfastness of character by long years of service. Elements taken into consideration were years of service, age, marital status and the offspring of the persons to whom annuities should be paid, and at the time annuitants became the recipients they must have reached the ordinarily allotted span of life in order to receive in their old age their rewards for fidelity, steadfastness and persistence in industry. For this purpose the donor was inspired to create the fund and to reward them by annuities. The inevitable effect of such action was to encourage, generally, among employers, the desire to promote similar rewards for the qualities mentioned and, among employees, industry, persistence of effort, and loyalty. Clearly such purposes are charitable as Congress has used the word in the exemption statutes, as the Courts have construed the same.

“ \* \* \* \* \*

“Appellant insists that appellee was not operated exclusively for exempt purposes. But we have observed that many purely charitable organizations were beneficiaries in the fund and that the only question as to exemption of all funds is that urged as to the sums paid out in the form of

annuities. And we have seen that the purpose of the latter payments were praiseworthy and the inevitable effect the encouragement and promotion of habits upon the part of employer and employees, tending to the greater good of the whole body politic. The fact that some annuitant may not need the pension is immaterial, just as in one of the cited cases the fact that persons who had performed unusual services and thus would become entitled to rewards might not need the same. There is no taint of personal or selfish motives. The donor gained nothing except to promote a plan of just reward to persons to whom she owed nothing, for virtues worthy of emulation in people generally; to satisfy a desire to see that loyal employees should be rewarded and not live in want or indigent circumstances."

It should be further understood, as set out in the Harrison case just cited, that a statute providing for exemption from taxes of corporations or foundations for relief, charitable, scientific, literary or educational purposes will be liberally construed, since exemption is a matter of grace, and an act of public justice. In other words, when dealing with the question of exemption, or a corporation organized for these purposes, the general rule that the exemptions must be specific, clear and unequivocal does not apply and the statute should be given a liberal interpretation in order to more completely realize its basic aim. *C. F. Mueller Co. v. Commissioner of Internal Revenue*, (C.C.A. 3) 190 F. 2d 120; *U. S. v. Proprietors of Social Law Library* (C. C. A. 1) 102 F 2d. 481.

The restriction of the beneficiaries to a designated group or class does not deny the exempt classification. In the editorial comment found in C. C. H. (Custom Clearing House, Inc.) Federal Tax Reporter Section 656.02, it is said:

“As to charitable organizations the department announced that the term ‘charitable’ in its legal sense ‘contemplates some public benefit open to an indefinite number of persons.’ Accordingly, an association organized and operated for the purpose of administering a fund which was to be used for the benefit of those who made regular contributions, thereto, or their dependents, was not exempt. (S. M. 3028, IV-1 CB 215). Similiar holdings were made S. M. 5699 (V-1 CB 80) and G. C. M. 1268 (VI-1 CB 83). On the other hand, the Board held that the exemption was not intended to apply to ‘public charities’ only, stating: ‘We do not think that the mere restriction of the beneficiaries of an otherwise charitable corporation to a designated group or class is sufficient ground upon which to deny exempt classification.’” \* \* \* Following that decision the Commissioner in G. C. M. 19028 (1937-2 CB 125) ruled that an employees’ organization administering a fund to which the employees contributed a minor portion was exempt.”

There are innumerable cases wherein the designation of charitable organizations was given to group of associates designed for the benefit of a special exclusive group. In Y.M.C.A. Retirement Fund, Inc., 18 B.T.A. 139, and Rike, 18 B.T.A. 149, a corporation to provide retirement annuities for superannuated or disabled secretaries

of the Y.M.C.A. which derives its funds from public contributions and from volunteer contributions of associates and members of the Y.M.C.A., no part of which inured to the benefit of any private individual, was exempt. This ruling was acquiesced in by the Treasury Department. In other words, a group was charitable when its sole purpose was to provide retirement salaries for secretaries of the Y.M.C.A. We submit there can be no more clearly defined or exclusive group of beneficiaries than these.

In G. C. M. 19028, 1937-2 CB 125 the General Counsel of the Treasury Department held that an organization engaged in administering a fund consisting of amounts contributed by the employees and the employers and others, for financial relief of employees or their families, (police officers) is a charitable organization if the employee beneficiaries contribution to the fund represents a minor portion of the corporation's income. This ruling revoked S. M. 3028 (IV-1, CB 80) which denied exemption where benefits were limited to a prescribed class of employees of a certain manufacturer, and G. C. M. 1268 (VI-1, CB 83), which denies exemption where benefits were confined to members of the association and were dependent on regular payment of dues, and where payments of benefits was not discretionary.

The Treasury Department has also acquiesced in the case of Sibley, 16 B.T.A. 915, which declared a corporation operated solely to expend sick and disability aid to

a specific department store's employees, deriving its income solely from contributions and interest on investments, was exempt.

In the case of *Gimbel v. Commissioner of Internal Revenue*, 54, F. 2d 780, a foundation whose dominant purpose was to grant pensions to those who served Gimbel Brothers, Inc. for over 25 years was held to be an exempt corporation; this case cites as authority such cases as *Bok v. McCaughn*, 42 F. 2d 616; *Mutual Aid and Benefit Association of Forstmann and Huffmann Employees v. Commissioner*, 42 F. 2d 619; *Sibley* 16 B.T.A. 915; *Eagen v. Commissioner*, 43 F. 2d 881; *Y.M.C.A. Retirement Fund*, 18 B.T.A. 139. The case says as follows:

“In reaching the conclusion to exempt these contributions to charity, we feel, as said in the *Bok* case, we do not ‘defeat the obvious purpose of Congress to encourage gifts of the class under consideration’ and we are in accord with Horace Binney’s definition of charity and quote viz.: ‘whatever is given for \* \* \* the love of thy neighbor \* \* \* given from these motives and to these ends, free from the strain or taint of every consideration that is personal, private, or selfish.’”

In the case of *Harrison v. Barker Annuity Fund*, 90 F. 2d 286, it is said, on page 289:

“In the language of 2 Bogert, *Trusts and Trustees*, par. 362, P. 1093: ‘Lastly, a trust may have as its object the improvement of the condition of a definite group of known individuals in

a mental, moral or physical way. Here the cestuis are from the beginning fixed and identifiable and are always to be such. There is to be no addition to the class. For example, a public subscription may be taken for the victims of a certain flood, fire, or tornado. Here the persons who suffered physical injury or lost property as a result of this event may well be easily discoverable. In a short time the trustees of the fund could learn the names and addresses of all the members of the class. The benefits to be conferred are of the type which usually validate charitable trusts; that is, they involve the relief of sickness, injury, and poverty. Shall the fact that these benefits are to go to definite persons make the trust private? It would seem here that each court should decide for itself whether the size of the class to be aided is such that there is a general public interest in the carrying out of the trust, or whether the relief is so limited in amount as to make it solely a matter of interest of the individual sufferers.' We conclude that the appellee is exempt from the taxes assessed within the meaning of the statute."

In the case of *Amy Hutchison Crellin v. Commissioner*, 46 B. T. A. 1152, there was created a trust providing, among other things, as follows:

"Eighth: That this Trust Agreement has for its purpose the giving of assistance in the education of youth and in particular the giving of financial aid to persons of college age whose circumstances prohibit such advantages.

(A) That to this end the following persons shall first become eligible to receive financial aid and may apply for such aid under the following conditions:

(Here follows a list of the names of fourteen persons, the grandnephews and grandnieces of Amy Hutchison Crellin.)

(B) That funds in the hands of the Foundation which are not required to carry out the provisions of this Trust Agreement under paragraph "A" of this Article "Eighth", sub-paragraphs 1 to 6, both inclusive, shall be used for educational aid to young members of the First Methodist Church of Pasadena, Pasadena, California. The conditions for such aid shall be stipulated by the Foundation, and may be in the form of loans or gifts."

It is to be noted that this Foundation was for two purposes: First, the financial aid to fourteen named, living grandnephews and grandnieces; and, second, loans or gifts to young members of a designated church. Four applications by church members were approved in 1941 and the loans made.

On page 1155 of the opinion of the Board, the Board held:

"If the trust had designated as beneficiaries only those stated in subdivision B, the statutory exemption would hardly be doubtful. Such a trust would be a means of providing for education, without personal specification or identification, of the young people of a church of the community, and this would be enough to establish the charitable character of the trust. In re Henderson's Estate, 112 Pac. (2d) 605; In re Willey's Estate, 128 Ca. 1; 60 Pac. 471."

The trust in this opinion was held to be non-charitable, however, because its primary purpose was deter-

mined to be the educational provision for the fourteen named individuals. On page 1156 the Board says:

“Behind the instrument, the evidence shows that the trust was born of the settlor’s desire to provide education for her fourteen grandnephews and grandnieces, \* \* \*. On the excess of the fund is to be devoted to the education of young people of the church; and in view of the amount of the fund and the number of primary beneficiaries, it is apparent that the aid provided for the church members is incidental to the main object of the trust.

“For this reason, it can not be said that the trust is a public charitable trust; the exemption is defeated by the specific enumeration of the settlor’s grandnephews and grandnieces as the individual beneficiaries.”

This case is noteworthy on two points: (A) A trust established to provide funds for loans for educational purposes is charitable within the meaning of the statute and entitles a corporation to exemption. This case also recognizes such a corporation to be charitable and does so without dispute. (B) A group, such as “the young people of the First Methodist Church of Pasadena, Pasadena, California,” can be recipients of the benefits of a trust and still the trust is charitable in nature. Under the Merrill Family Foundation, all descendants, and husbands and wives of descendants, are eligible. This is certainly no more restrictive than is the provision in the Crellin Trust for the young people of the First Methodist Church of Pasadena. The Crellin Trust was held non-

charitable, because its predominant purpose was the education of fourteen named people. It was, however, held to be unquestionably entitled to be classed as charitable if it had included only the beneficiaries designated as "the young people of the First Methodist Church of Pasadena." There appears to be no valid distinction between this class of beneficiaries designated in the Crellin Trust and the class of Beneficiaries designated in the Marriner W. Merrill Family Foundation, Inc.

In the case of *Emerit E. Baker, Inc. v. Commissioner*, 40 B. T. A. 555, a corporation was formed for the following purposes:

"The object for which it is formed is to use its property, funds and income for any or all of the following purposes; To establish, build, improve and maintain parks, public grounds, public buildings, public baths and play grounds, and contribute to the support of any of the foregoing described projections or institutions; to help and aid crippled children; to render financial aid to worthy young people seeking an education; to receive and accept gifts, bequests and devises. \* \* \*

Here again a corporation was held to be charitable, whose purpose included rendering financial aid to worthy young people seeking an education. It is to be noted also that a later restriction placed on this grant by wish of the donor in his will restricted the financial aid for education "preferably for the children of employees of Kewanee Boiler Company \* \* \*." (See page 557). Here again a charitable corporation was for a

group of beneficiaries even more restrictive than those in the Merrill Family Foundation, and the charitable corporation was for the purpose of rendering financial aid to worthy young people seeking an education. It is further interesting to note that student loans were granted, and as is stated on page 559:

“The student loans were all secured by promissory notes payable to petitioner six years from date, with interest at 6 percent per annum from the date of maturity.”

And on page 559, the Court states:

“There can be no doubt, and apparently the respondent does not contend otherwise, that the objects and purposes for which the petitioner was organized meet the requirements of the statute for exemption from tax. They were purely charitable and educational.”

## POINT II.

THE MARRINER W. MERRILL FAMILY FOUNDATION, INC.  
IS EXEMPT AS A CORPORATION ORGANIZED AND  
OPERATED FOR EDUCATIONAL PURPOSES.

The statute also exempts organizations which are organized for educational purposes. Here again the word educational must be construed in its broadest sense and is not confined to associations which operate schools or colleges. In C. C. H. (Custom Clearing House, Inc.), Standard Federal Tax Reporter, Section 656.02 it is said that educational institutions need not be schools or colleges in order to be exempt. Section

654 of the above cited volume states that an educational organization within the meaning of the Internal Revenue Code is one designed primarily for the improvement or development of the capabilities of the individual. The educational purpose may be one designed for the benefit of an undivided number of persons by bringing their minds and hearts under the influence of education and to make higher education accessible (*Bok v. McCaughn*, 42 F. 2d 616).

As examples of the wide scope of the meaning of "educational", the following are submitted:

"A corporation organized to maintain a band for giving free public concerts and the promotion of musical art is exempt as an educational institution, the terms not being confined to colleges and schools (I.T. 1475, 1-2 C.B. 184.) This bulletin of the Income Tax Division of the Internal Revenue Bureau goes on to say that the fostering of an appreciation or a desire of good music and of the promotion of musical art are actually of an educational nature.

An association organized and operated exclusively for giving musical concerts was exempt as education. S.M. 1176, 1 C.B. 147.

The National Tax Association is exempt, being organized and operated exclusively for scientific and educational purposes (special rule, February 11, 1939, 393 C. C. H., paragraph 6180).

College students league, organized to bring about an open-minded consideration of social, in-

dustrial, political and international questions, was exempt as exclusively educational (I.T. 1224, I-1 C.B. 256).

It is, of course, a stated purpose of the Merrill Family Foundation to grant loans to any and all descendants and the husbands or wives of such descendants of Marriner W. Merrill. This clearly is for the fostering of education to assure that the benefits of education may be taken advantage of by increasing numbers of people, all of which is certainly toward the common good of the public and of society. The purposes to be accomplished are certainly not limited to personal or private concern, as the funds are available to any and all of those who come within its classification no matter how far removed or remote. The granting of a loan to enable a student in the year 2000 to attend a college in the United States is certainly no personal benefit to the members of the current Board of Directors and is certainly no personal or private concern of them. It should further be noted that the beneficiaries of the Foundation are certainly not limited to those whose last names might be Merrill, as the husband of a female descendant of Marriner W. Merrill qualifies for a loan.

The cases of *Amy Hutchison Crellin and Emerit E. Baker, Inc. v. Commissioner*, cited above, are, we submit, square authority that a corporation designed to give financial aid, by way of loans to persons for educational

purposes, comes within the language of the exemption statute and rather than to quote the pertinent portions of those decisions again, reference is made herewith to them.

### POINT III.

#### NO PART OF THE NET EARNINGS OF THE CORPORATION INURES TO THE BENEFIT OF ANY PRIVATE SHAREHOLDER OR INDIVIDUAL.

The Foundation has, essentially, three sources of funds. One is the voluntary gifts and contributions from individuals (Article I, Section Two of By-Laws) without restriction and from anyone, be he member or non-member; another is the funds derived from the Annual Member who pays a minimum annual fee of \$1.00 per year and the Sustaining Member who pays \$100.00, who are restricted to descendants of Marriner W. Merrill or any person who marries a descendant. (Article II of the By-Laws) The third is from whatever interest or returns are realized from the investment of funds.

There is no provision whatever for payment of dividends, bonuses, gratuities, or any sums in any form to the members. They cannot, under the corporation charter and By-Laws, realize any return as a result of their membership. The membership dues are in a fixed amount, bearing no relationship to the funds of the corporation or its net earnings, and there is certainly no provision whereby the membership dues would be reduced if the income of the corporation becomes large. No member is entitled to a single benefit—either pecuniary or in

property—from his membership. His only benefit is the well-recognized benefit of personal satisfaction and the satisfying of the desire to help those who are less fortunate.

The record in the proceedings bears this out. On T-11, Mr. Merrill states:

“MR. MERRILL: No, the beneficiaries are not members of that. They don't have to be members of the corporation, and in these instances are not members of the corporation.

“The money is donated with the understanding as provided in the Affidavit and By-Laws without any refund or return to the donors of any kind or character, or by way of interest or dividends or otherwise; and that money is used exclusively in the future for the purpose of loaning money to students within the qualifications mentioned to go to college in any part of the world. And the objective of the Foundation is to provide for educational development of individuals that the Board of Directors may determine are within the rights under the Affidavit to make the loan.”

This was considered as testimony under oath and there is nothing whatever in the record to rebut it.

While it is true that a member may secure financial assistance for education, yet this assistance is in no way dependent upon his being a member. The By-Laws expressly provide (Article V. Section 2) that those who receive assistance need not be members. If a member did receive such help, it would have to be on the same footing

and basis as a non-member, with the same obligations. That some of the members may receive help, does not destroy the exemption. For example, members of the American Legion may be beneficiaries of its fund for disabled veterans, but the fund itself would not be deprived of its exemption. (C. C. H. Federal Tax Reporter, Section 656.04). A member of the Polio Foundation or Red Cross may receive aid, not because he was a member, but because of his need, and that would not deprive the fund of its exemption.

The case of *Bohemian Gymnastic Asso. Sokol of City of New York v. Higgins*, 147 Fd 774 is, in this regard, of some importance. Therein the Association was considered educational, with no benefits inuring to shareholders or individuals. Membership dues and the running of a commercial bar and restaurant provided the funds. The court, on page 777, states:

“If Bohemian were a mere social club such receipts from persons other than members might be regarded as earnings from a business beyond normal corporate purposes and ordinary returns from investments of its property, and also might be regarded as inuring to the benefit of its members by lessening their dues. We have construed statutory exemptions somewhat narrowly in the case of social clubs and have treated income derived by them from outside sources, if considerable in amount and recurrent, as destroying the exemption. But in the case of educational or charitable corporations the exemption is construed broadly as we held that it should be in *Roche’s*

Beach, Inc. v. Commissioner, 96 F. 2d 776, 779, supra. See also Helvering v. Bliss, 193 U. S. 144, 150 55 S. Ct. 17, 79 L. Ed. 246, 95 A.L.R. 207; Jones v. Better Business Bureau of Oklahoma City, 10 Cir., 123 F. 2d 767, 769; United States v. Proprietors of Social Law Library, 1 Cir., 102 F. 2d 481, 482. If so construed, the words 'inure to the benefit' would, we think, require some benefit other than mere membership and a possible reduction in the amount of dues contributed to the very educational or charitable objects for which the corporation was organized. By this interpretation of the exemption clause the very reasonable decision of the First Circuit in United States v. Proprietors of Social Law Library, 102 F. 2d 481, supra, can be reconciled with the Jockey Club and West Side Tennis Club decisions, supra, where we dealt only with the exemption in relation to social clubs.

"The benefit that is conferred upon the members in the case at bar is really an opportunity to receive and promote a certain type of education. Their contributions in the way of dues, whether more or less in amount, are also for educational purposes. We cannot believe that the statute was ever intended to preclude an exemption in such a case. The result might be to deprive a religious, charitable or educational corporation which raised money through entertainments or some business not representing its primary objects of any exemption, if organized with members paying trifling dues, and to grant an exemption if no dues were to be paid. The distinction seems to us an unreal one. We think an exemption under the present circumstances has never been denied."

In *Northwestern Jobbers' Credit Bureau v. Commissioner of Internal Revenue*, 37 F. 2d 880, the Court defines the phrase "inures to the benefit of any private shareholder or individual" as "meaning to serve to the use or benefit of such shareholders." See also *Commissioner of Internal Revenue v. Orton*, 173 F. 2d 483, 488. It is submitted that a dollar donated to this Foundation would no more inure to the benefit of the donor than would a dollar donated to the Red Cross, the Polio Foundation, the University of Utah, or the church of the donor's choice.

## CONCLUSION

The above discussion has been for the purpose of pointing out that the Marriner W. Merrill Family Foundation, Inc. meets each and every test imposed by the exemption statute. It is submitted that the Foundation clearly meets all requirements and should be held to come within the statute granting the exemptions.

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