

1954

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

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

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

Recommended Citation

Brief of Appellant, *Marriner W. Merrill Family Foundation, Inc. v. State Tax Comm. Of Utah*, No. 8192 (Utah Supreme Court, 1954).
https://digitalcommons.law.byu.edu/uofu_sc1/2217

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

RECEIVED

DEC 3 1954

LAW LIBRARY

U. of U.

IN THE SUPREME COURT
of the
STATE OF UTAH

MARRINER W. MERRILL FAMILY
FOUNDATION, INC.,

Plaintiff,

— vs. —

THE STATE TAX COMMISSION OF
UTAH,

Defendant.

Case No. 8192

APPELLANT'S REPLY BRIEF

ON WRIT OF CERTIORARI
from

THE STATE TAX COMMISSION OF UTAH

MERRILL & MERRILL

Attorneys at Law

Residence : Pocatello, Idaho

ELIAS L. DAY

Attorney at Law

Residence : Salt Lake City, Utah

Attorneys for Appellant

TABLE OF CONTENTS

	<i>Page</i>
Argument and Authorities.....	1
POINT I. — THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., IS EXEMPT AS A CORPO- RATION ORGANIZED AND OPERATED FOR EDU- CATIONAL PURPOSES AND THEREFORE IS NOT TAXABLE UNDER THE PROVISIONS OF THE CORPORATION FRANCHISE TAX ACT.	1
POINT II — THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., IS NOT A SMALL LOAN COR- PORATION ORGANIZED FOR PROFIT.	3
POINT III. — THE METHOD OF FINANCING EDU- CATION BY THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., BRINGS IT UNDER THE EDU- CATIONAL EXEMPTION OF THE CORPORATION FRANCHISE TAX ACT.	5

CASES CITED

Amy Hutchison Crellin v. Commissioner, 46 BTA 1152.....	4
Emerit E. Baker, Inc. v. Commissioner, 40 BTA 555.....	4
Havemeyer v. Commissioner, 98 F. 2d 706.....	5

TEXTS CITED

C.C.H. Federal Tax Reporter, Section 656.04.....	2
C.C.H. Federal Tax Reporter, Section 660.04.....	3

IN THE SUPREME COURT
of the
STATE OF UTAH

MARRINER W. MERRILL FAMILY
FOUNDATION, INC.,

Plaintiff,

— vs. —

THE STATE TAX COMMISSION OF
UTAH,

Defendant.

Case No. 8192

APPELLANT'S REPLY BRIEF

ON WRIT OF CERTIORARI

from

THE STATE TAX COMMISSION OF UTAH

ARGUMENT AND AUTHORITIES

POINT I.

THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., IS EXEMPT AS A CORPORATION ORGANIZED AND OPERATED FOR EDUCATIONAL PURPOSES AND THEREFORE IS NOT TAXABLE UNDER THE PROVISIONS OF THE CORPORATION FRANCHISE TAX ACT.

It is asserted by the defendant in its Brief that the Merrill Family Foundation, Inc. does not comply with that portion of the exemption statute which reads as follows:

“* * * no part of the net earnings of which inure to the benefit of any private shareholder or individual.”

It is submitted that the record in this case shows that an individual can receive absolutely no benefit by the mere fact that he is a stockholder or an individual interested in the Merrill Family Foundation. As pointed out in our original Brief membership in the Foundation carries with it absolutely no right or chance of benefit. Membership, in and of itself, grants no rights or privileges or pecuniary gain to any person. While it is true that a member may qualify for a loan, his membership in the Foundation is not a requirement therefor. A person may contribute to the Community Chest or the Boy Scouts, and he may in turn receive aid from these organizations, not because he was a member or contributed but because of his need. Such is the exact situation with the Merrill Family Foundation. This type of situation does not deprive the fund of its exemption.

In C.C.H. Federal Tax Reporter, Section 656.04, is found the following:

“American Legion. The fact that some of the members may be beneficiaries under a fund for disabled veterans and their orphans does not deprive such fund of exemption. I.T. 2139, IV—1 C.B. 38.”

C.C.H. Federal Tax Reporter, Section 660.04, is as follows :

“By-laws of a country club that, on dissolution, life members shall receive the assets after debts are paid and before any sums are paid to regular members or shareholders, does not deny exemption. S.M. 958, 1 C.B. 202.”

From the above and from the organizational records in this case it would appear clear that there is no benefit to any private shareholder or individual of the Merrill Family Foundation in the sense set out in the statute. The primary requisite in this regard is that these corporations shall not operate for private profit. This is the exact case with the Merrill Family Foundation.

POINT II.

THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., IS NOT A SMALL LOAN CORPORATION ORGANIZED FOR PROFIT.

If we follow the trend of thought of the defendant, apparently defendant classifies the Merrill Family Foundation as a small loan corporation organized for profit and “predicated upon the commercial formula of investing capital and realizing the ultimate return there-

of together with the increment of interest.” Even a casual glance at the organization of the Merrill Family Foundation would be convincing that it is not a loaning institution. An organization to aid students to obtain a college education by making available to them funds by way of loans is a well recognized educational benefit.

In the case of *Amy Hutchison Crellin v. Commissioner*, 46 B.T.A. 1152, quoted in our original Brief, we find the following:

The Crellin Foundation was set up for two purposes, the second of which was listed in subdivision B, consisting of loans or gifts to young members of a designated church. Four applications by church members were approved and loans made to them. On page 1155 of the opinion of the Board, the Board of Tax Appeals 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 Cal. 1; 60 Pac. 471.”

See also *Emerit E. Baker, Inc. v. Commissioner*, 40 B.T.A. 555, cited in appellant’s original Brief on pages 20 and 23.

POINT III.

THE METHOD OF FINANCING EDUCATION BY THE MARRINER W. MERRILL FAMILY FOUNDATION, INC., BRINGS IT UNDER THE EDUCATIONAL EXEMPTION OF THE CORPORATION FRANCHISE TAX ACT.

Under Point III of defendant's argument it is asserted that this Foundation does not qualify under the educational exemption for the reason that it does not participate and engage in education as such. In other words, the defendant would restrict the meaning of this statute to such a degree that only schools actually giving instruction would qualify. It is submitted that the definitions and cases in this regard do not bear out defendant's contention. In this respect we call further attention to the case cited above of Amy Hutchison Crellin and also Emerit E. Baker.

In addition to the cases cited in appellant's original Brief, showing that the beneficiaries are not so restricted as to disqualify the Foundation for exemption, we call the Court's attention to *Havemeyer v. Commissioner*, 98 F. 2d 706. The syllabus in this case is as follows:

"A special aid association, organized to perform and performing exclusively acts of charity by giving relief from funds collected thereby to indigent and deserving persons designated by board of managers, was 'charitable association,' gifts to which by individuals were deductible in computing their taxable income, though all beneficiaries designated by board were personally known to members of association. Revenue Act of 1932, sec. 23n(2), 26 U.S.C.A. sec. 23 note."

And on page 707 the Court says:

“It is true that the beneficiaries who were actually designated by the Board of Managers were all personally known to one or more members of the Association and were people who might perhaps have been given aid by one or more of them had the Association not been in existence but that does not change the character of the Association itself. That was as extensive in charitable scope within the ranks of the indigent and deserving public as it means and the discretion of its Board of Managers might make it. Its activities were exclusively charitable within the statutory meaning of that term. *Harrison v. Barker Annuity Fund*, 7 Cir., 90 F. 2d 286, 289; *Gimbel v. Commissioner*, 3 Cir. 54 F. 2d 780; *Bok v. McCaughn*, 3 Cir., 42 F. 2d 616. And they were all of the kind it was organized to conduct as shown by the articles of association and within the limitations of its constitution. Having been organized to perform exclusively acts of charity and having performed such acts and no others, this Association in form and fact was a charitable association of the kind named in Sec. 23 (n) (2) of the Revenue Act of 1932, 26 U.S.C.A. sec. 23 note. It had no net earnings so far as appears and certainly no part of them, if it had any, inured to the benefit of any private shareholder or individual having a personal and private interest in the activities of the Association. See, T. R. 77; Art. 527. Consequently gifts made by individuals to the Association within the taxable year were deductible in computing the net income of the petitioner.”

The above discussion is, of course, to be read in conjunction with appellant's original Brief in setting out the position that the Marriner W. Merrill Family Foundation, Inc. meets each and every test imposed by the exemption statute.

Respectfully submitted,

MERRILL & MERRILL

Attorneys at Law

Residence: Pocatello, Idaho

ELIAS L. DAY

Attorney at Law

Residence: Salt Lake City, Utah

Attorneys for Appellant