The original documents are located in Box 11, folder “Tax Exempt Status of Private Educational Institutions” of the Richard B. Cheney Files at the Gerald R. Ford Presidential Library.

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THE WHITE HOUSE
WASHINGTON

September 11, 1975

MEMORANDUM FOR THE PRESIDENT

THROUGH: DONALD Rumsfeld or RICHARD CHENEY

FROM: ROBERT GOLDWIN

The Internal Revenue Service has an extensive program of regulation to assure that all private schools follow non-discriminatory policies. This program seems to be little known or noticed, but potentially in size, scope, and impact it could exceed by far the "affirmative action" programs of the Departments of Labor and HEW.

The materials attached, prepared in my office under my supervision, describe this program to regulate private schools, colleges, and universities. Several features of this program are especially noteworthy:

1) The reach of this program is far greater than that of "affirmative action" because it applies to all private schools, whether they are federal contractors or not. Any school that applies for or holds tax-exempt status falls under these IRS regulations. Since it is just about impossible for a private school to exist without tax exemption and without tax deductibility for gifts made to the school, these regulations bring all private schools under government supervision, as if they were public institutions.

2) There seems to be no legislative basis whatsoever for this regulation of private schools. There is a tenuous judicial basis, but it was thin to begin with and it has been stretched.
3) The burdens placed on the institutions are incredibly heavy. For example, a prestige college may receive 20 applications for each freshman opening; if they accept 500 freshmen, they must place 10,000 dossiers on file each year, and keep them for three years. And they must attach an explanation of why each applicant was rejected, although the only honest answer in most cases is simply that there was no more room.

4) The fact that each "rejection" may be scrutinized means that schools will tend to make decisions on the basis of impersonal, numerical criteria, to lessen the chance that they will be accused of discrimination. This will reduce the inclination to look for the unusually innovative applicant with a spotty record, and will tend to lead to the kind of "mass education" the President has been warning against in recent speeches.

5) This regulation applies only to schools, but since it begins by defining "charitable" institutions, there is no reason why the same reasoning will not lead to regulation of churches, for example. Churches, museums, and "charitable" voluntary organizations of every variety depend on tax exemption for their existence. The danger is that the reasoning of these regulations could be used to weaken or even eliminate the distinction of public and private and bring every organized activity in America under government regulation.

6) The District Court in Green v. Connally asserted that "tax exemptions and deductions certainly constitute a Federal Government benefit and support." (A fuller statement is quoted in the materials attached.) This assertion is the starting point for the IRS regulations.

It may seem far-fetched, and it may be unwitting on the part of IRS, but the underlying assumption seems to be that all property and income really belong to the Government. Any property or income that the Government allows persons or institutions to retain are thus "gifts" from the Government to the recipient, comparable to Government grants.

But the fundamental economic principle of our society and its political liberties has always been private property. Our starting point has always been that goods and income are the property of individuals and organizations, by right, and they can be taxed only by the consent of the taxpayer, expressed in constitutional institutions by elected representatives.
7) If I am not mistaken, the activities of the Exempt Organizations Division of the IRS have grown rapidly in recent years. They now exercise extensive control over schools, foundations, and many other kinds of organizations, through regulation and requirements for record-keeping. The regulations published in tentative form in the Federal Register on February 18, 1975, had not been made final as of August 25, but they may be close to official promulgation. I urge that this matter be looked into without delay.
MEMORANDUM TO: ROBERT GOLDFIN
FROM: KIRK EMMERT

1. The Internal Revenue Code (1954)

Section 501 of the Internal Revenue Code (1954) is the statutory basis for granting tax exempt status to private educational institutions and other charitable groups. Section 170 of the Code provides that individuals can deduct contributions to tax exempt organizations from their total taxable income. The IRS determines whether an institution shall be granted tax exempt status.

2. IRS Ruling on Discrimination (1970)

In May 1969 Negro plaintiffs in Mississippi brought suit to enjoin the Commissioner of Internal Revenue from granting tax exempt status to private schools in Mississippi which excluded Negroes on the basis of race. In June 1970 the district court ordered the Commissioner to suspend assurances of tax exempt status to these Mississippi schools until the IRS had determined whether the schools operated on a segregated basis. In the midst of this litigation, the IRS announced on July 10, 1970 that it could "no longer legally justify allowing tax-exempt status to private schools which practice racial discrimination nor can it treat gifts to such schools as charitable deductions for income tax purposes." The IRS found that a school which discriminates is not "charitable" within the common law meaning of the term found in section 501 of the Internal Revenue Code (1954):

All charitable trusts, educational or otherwise, are subject to the requirement that the purpose of the trust may not be illegal or contrary to public policy. Although the operation of private schools on a discriminatory basis is not
prohibited by Federal statutory law, the policy of the United States is to discourage discrimination in such schools. Developments of recent years reflect a Federal policy against racial discrimination which extends to racial discrimination in education. Therefore a school not having a racially nondiscriminatory policy as to students is not "charitable" within the common law concepts reflect in sections 170 and 501 of the Code (Rev. Rul. 71-447).


This is the case brought by the Negro plaintiffs in Mississippi. The District Court of the District of Columbia held that the Internal Revenue Code (1954) does not provide a tax exemption for, or a deduction for a contribution to, any educational institution unless it is operated on a nondiscriminatory basis. The Court in effect upheld the IRS ruling of the previous year, but rather than relying on the common law to explain the key provisions of the Code, it rested its holding on established principles for interpreting Congressional intent, e.g., "the general and well-established principle that the Congressional intent in providing tax deductions and exemptions is not construed to be applicable to activities that are either illegal or contrary to public policy." Although the Court found it unnecessary to reach the constitutional question, it did observe that the federal government could not under the Constitution give direct financial aid to schools practicing racial discrimination. But tax exemptions and deductions certainly constitute a Federal Government benefit and support. While that support is indirect, and is in the nature of a matching grant rather than an unconditional grant, it would be difficult indeed to establish that such support can be provided consistently with the Constitution. (p. 152).

The Court observed that the freedom of a private institution from governmental intervention "is not to be equated with a right of support."

The Court also extended the IRS ruling of 1970 by requiring that no private school in Mississippi be granted tax-exempt status until it had

1) effectively brought to the attention of "persons of student age...who are of minority groups, including all non-whites" that the school is nondiscriminatory;

2) Supplied the IRS with information regarding the racial composition of its student body, applicants, faculty, and
scholarship recipients;

3) provided a list of its officers, incorporators and donars and stated whether any of them are members of groups whose objective is to maintain segregated schools.

The Court added that these requirements "do not establish substantive criteria but are information requirements, to assure that the Service will have salient information at hand before it makes a certification or gives an assurance of exemption or deductibility." The Court also noted that these requirements are being applied to Mississippi because of its history of a state-established dual school system and because of the circumstances surrounding the growth of private schools in Mississippi. Any other state having private schools which grew up under similar conditions would be subject to similar requirements.

4. New IRS Proposal

On February 15, 1975 the IRS published a new set of proposed procedures designed to implement its 1970 ruling (Rev. Rul. 71-447). These procedures have not yet been formally adopted, although rulings are now being made according to their provisions (See attached Revenue Procedures).

The IRS states that new procedures are required because "experience has shown a need for more specific guidelines to insure a uniform approach to the determination whether a private school has a racially nondiscriminatory policy as to students." According to the new procedures a school "must show affirmatively both that it has adopted a racial nondiscriminatory policy as to students that is made known to the general public and that it has operated continuously in accordance with such" a policy. There are a number of specific requirements:

1) a school may use a variety of means but it must publicize annually its racially nondiscriminatory policy in such a way as to make "the policy known to all racial segments of the general community served by the school" (For more details see the middle column of p. 2);

2) a "school must be able to show that none of its facilities and programs permit or encourage racial discrimination...";

3) the existence of a nondiscriminatory policy with regard to scholarships must be publicized in the community served by the school;

4) schools applying initially for tax-exempt status must supply the following information: racial composition of student body, applicants for admission, faculty, staff and scholarship recipients; a list of founders, board members and major donors and a statement whether any are committed to maintaining segregated education;
5) each exempt private school must maintain for a minimum of three years the following information and records for the use of IRS:

a) "all applications for general admission. Any rejected applications must be annotated to show the reasons for rejection";

b) all requests for scholarships, a "list of amounts awarded or the reasons for rejection...", and all related correspondence;

c) "all applications for employment. Any rejected applications must be annotated to show the reasons for rejection"

d) copies of all material used to solicit contributions and all catalogues, brochures, etc.

e) "failure to maintain or to produce the required records and information will warrant the presumption that the organization has failed to comply with the guideline. Such presumption may be rebutted only by clear and convincing evidence to the contrary."

5. Comment on Proposed Procedures

The IRS has moved far beyond the Green v. Connally position by a) requiring extensive record-keeping and b) requiring of every private school in the country what the Court in Green said should be required only of private schools with a history similar to the white academies in Mississippi. The IRS presents no convincing evidence for the need for such an expansion in either the scope of its requirements or in the kinds of schools which must conform to the requirements.

Several of the record-keeping requirements are unreasonable and demonstrate an ignorance of the way in which college admissions and faculty hiring are in fact handled.

It remains unclear just what the IRS is going to do with all this information or what its standard is for determining the existence of discrimination. While there is no mention here of goals or quotas, these requirements obviously make the imposition of quotas easier and more likely. At the very least, it is clear that the burden of proof of nondiscrimination rests with the private schools. It seems reasonable to conclude that any school with very few or no minority students will be expected to make such a proof even if there is no specific evidence it has discriminated.
Coordinating Committee, Department of States, 1975

meeting by

STUDY GROUP

Committee/Group 7 of the Consultative Organization UMCO)

Washington, D.C. the meeting will be open to the public.

The Committee will discuss United States positions for the Thirty-second General Assembly of the U.N. Members of the public will be admitted by prior written application to the Secretary, Shipping Department of States. A list of names of persons admitted to the meeting will be on file in the room.

The meeting is requested to be open to the public.

The meeting will be open to the public.

The Department of State announces that Study Group 7 of the U.S. National Committee for the International Radio Consultative Committee (CCIR) will meet on March 13, 1975, at the U.S. Naval Observatory, 29th Street and Massachusetts Avenue NW., Washington, D.C. The meeting will begin at 9:30 a.m. in Room 200 of Building 17.

Study Group 7 deals with time-signal services by means of radio communications. The purposes of the meeting will be:

1. Review of work program leading to the international meeting of Study Group 7 in 1976;
2. Assignment of responsibilities;
3. Tentative schedule of deadlines for submission of documents to the National Committee; and

Members of the general public will be admitted up to the limits of the capacity of the meeting room. Members of the general public who plan to attend the meeting are requested to inform Mr. Ruth Pesque, Chairman of U.S. Study Group 7, prior to March 13. Mr. Pesque can be contacted at NASA Headquarters, telephone number 302-635-0008.


CONGRESS L. NEUMAN

U.S. DEPARTMENT OF STATE

SHIPPING COORDINATING COMMITTEE Meeting

A meeting of the Shipping Coordinating Committee will be held at 2:30 p.m. on March 1, 1975, in Room 620, Coast Guard Headquarters, 400 Seventh Street SW., Washington, D.C. The meeting will be open to the public.

The Committee will discuss United States positions for the Thirty-second Session of the International Maritime Consultative Organization (IMCO) Maritime Safety Committee, scheduled to meet in London, March 17-21, 1975. Persons wishing to attend the meeting should contact Mr. Samuel V. Smith, Acting Executive Secretary, Shipping Coordinating Committee, Department of State, Washington, D.C. 20529, telephone access code 202-635-2635.


RICHARD W. CHILDS

Chairman,

Shipping Coordinating Committee.

NOTE:
The proposed revenue procedure published here has not yet been officially promulgated. Replies to the proposal have been received and revision of this procedure is underway. Rulings on individual cases are being made, however, based in general on the guidelines indicated in this procedure; this happens when a school asks for tax-exempt status, or when IRS receives complaints about discrimination at a currently tax-exempt school.

Internal Revenue Service 
PRIVATr SCHOOLS

Proposed Revenue Procedure

Notice is hereby given that the Internal Revenue Service proposes to issue a revenue procedure set forth in tentative form below. Prior to the final adoption of such revenue procedure, consideration will be given to any comments pertaining thereto which are submitted in writing (preferably six copies) to the Commissioner of Internal Revenue, Attention: Executive Director, Exempt Organizations Division, 1111 Constitution Avenue, Washington, D.C. 20224, by May 21, 1975. Designations of material as confidential or not to be disclosed, contained in such comments, will not be accepted. Thus, a person submitting written comments should not include material that he wishes to be confidential or inadmissible for disclosure to the public. It will be the responsibility of the person submitting the comments to the Internal Revenue Service to be sure that every written comment submitted is intended by the person submitting it to be
subject in its entirety to public inspection and copying in accordance with the provisions of 5 U.S.C. 552(a) and (b) (9) for public inspection and copying of written comments received in response to a notice of proposed rulemaking.

DONALD C. ALLENBERGER,
Commissioner of

REVENUE PROCEDURES

SECTION 1. Purposes. This Revenue Procedure is to be issued under section 6304 of the Internal Revenue Code of 1954 in order to provide general guidelines for determining whether private schools that are applying for recognition of exemption under sections 501(a) and 501(c) (3) of the Internal Revenue Code of 1954, or are presently exempt from tax, have racially nondiscriminatory policies as to students.

SEC. 2. Background. Definition. A school that does not have a racially nondiscriminatory policy as to students does not qualify as an organization exempt from Federal income tax, see Rev. Rule, 1971-2 C.B. 210, which defines a racially nondiscriminatory policy as meaning that:

(a) The school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school and that the school does not discriminate on the basis of race in administration of its educational programs or activities, and loan programs, and athletics and other school-related activities.

(b) The school complies with applicable Federal, State, and local civil rights laws.

(c) The school does not publish any notices of racial discrimination.

(d) The school does not discourage communication of its racially nondiscriminatory policies as to students.

2. Organization and operation. A school's adherence to these guidelines is to be determined on the basis of all relevant evidence. The guidelines set forth below are intended only as a starting point in a review of the total evidence and will not be considered as controlling in every case. However, failure to comply with the guidelines will ordinarily result in the termination of the exempt status of the school.

65. Scholarships and loan programs. As a general rule, all scholarships or other comparable benefits portable for use at any school must be offered on equal terms to the members of all races. Their availability on this basis must be known throughout the general community being served by the school in order for that school to be considered racially nondiscriminatory as to students and should be referred to in the publicity required by this section. No scholarship, loan or other financial assistance program may favor one racial group at a particular school without adversely affecting its exempt status unless the cumulative effect of all of the financial assistance programs does not significantly derogate from its racially nondiscriminatory policies.

66. Failure to comply with guidelines. Failure to comply with the guidelines will ordinarily result in the termination of the exempt status of the school.

NOTICES
Austria
Duty
Determination

Section 2. Public complaints of racial discrimination. Whenever a citizen has evidence that an exempt private school is not operating under a racially nondiscriminatory policy as to students, any communication may be initiated which will be sent either to his local District Director or Preliminary Countervailing Duty Division, 111 Constitution Avenue, Washington, D.C. 20229. Similarly, any judicial or administrative determination that a school does not follow the Director, Exempt Organizations Division, SEC. 72-54, a ruling that a school is not maintained or to produce the records of non-rubber footwear from Argentina.

Before a final determination is made the operation of a newly proposed exempt program of the LICA for the footwear industry will be observed to prove certain it is not operated so as to result in the payment or bestowal of a bounty or grant. Consideration will be given to any relevant data, views, or arguments submitted in writing with respect to the preliminary determination. Examinations should be addressed to the Commissioner of Customs, 2100 E Street NW, Washington, D.C. 20229, in time to be received by his office no later than March 20.

This preliminary determination is published pursuant to section 201(a) of the Tariff Act of 1930 (19 U.S.C. 1301(a)).

H. W. Adams, Assistant Secretary of the Treasury.

[FR Doc. 75-4107 Filed 2-14-75; 8:45 a.m.
Office of the Secretary

[FR Doc. 75-4108 Filed 2-14-75; 8:45 a.m.

TREASURY NOTES OF SERIES 1977

February 12, 1975.

I. Invitation for Tenders

The Secretary of the Treasury pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $11,000,000- 000, or thereabouts, of notes of the United States, designated Treasury Notes of Series F-1977. The interest rate for the notes will be determined as set forth in Section III, paragraph 3, hereof. Actual amounts of the notes may not be issued at the average price of acceptances to Government accounts and Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities. Tenders will be received up to 1:30 p.m. Eastern Standard Time, Wednesday, February 15, 1975, under competitive and noncompetitive bidding, as set forth in Section 122 hereof.

II. Description of Notes

1. The notes will be dated March 3, 1976, and will bear interest from that date, payable on a semiannual basis on August 15, 1976, and February 15, 1977, and will mature February 28, 1977, and will not be subject to call for redemption prior to maturity.

2. The income derived from the notes is subject to all taxes imposed under the Internal Revenue Code of 1954. The notes are subject to estate, inheritance, and other estate taxes, whether Federal, State, or local, but are exempt from all local taxes called for or levied in the local jurisdiction in which they are invested.

The Federal Reserve Bank of New York, pursuant to section 5(c)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 2202), has certified the following rates of exchange which varied by 5 per cent or more from the quarterly rate published in Treasury Division 73-24 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whatever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following daily rates:

Austria schilling: January 29, 1975... 1.2005
Germany deutsch mark: January 29, 1975... 1.2005
Norway kroner: January 27, 1975... 1.2005

January 27, 1975... 1.2005

NOTE

[FR Doc. 75-4102 Filed 2-14-75; 8:45 a.m.
Office of the Secretary

[FR Doc. 75-4109 Filed 2-14-75; 8:45 a.m.

TREASURY NOTES OF SERIES E-1977

February 12, 1975.

I. Invitation for Tenders

The Secretary of the Treasury pursuant to the authority of the Second Liberty Bond Act, as amended, invites tenders on a yield basis for $11,000,000- 000, or thereabouts, of notes of the United States, designated Treasury Notes of Series E-1977. The interest rate for the notes will be determined as set forth in Section III, paragraph 3, hereof. Actual amounts of the notes may not be issued at the average price of acceptances to Government accounts and Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities. Tenders will be received up to 1:30 p.m. Eastern Standard Time, Wednesday, February 15, 1975, under competitive and noncompetitive bidding, as set forth in Section 122 hereof.

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