***Parks v. Commissioner of Internal Revenue, 145 T. C. 278 (2015)*** (U. S. Tax Court, 2015)

The U. S. Tax Court ruled that a private foundation's expenditures on radio messages aimed at influencing ballot measures were taxable, leading to excise tax liabilities for the foundation and its manager. The court clarified that these messages constituted attempts to influence legislation under IRS rules, impacting how private foundations can use funds for political advocacy.

**Parties**

Loren E. Parks, the petitioner, was the foundation manager of Parks Foundation, also a petitioner. Both were respondents to the Commissioner of Internal Revenue in the case before the U. S. Tax Court.

**Facts**

Parks Foundation, a private foundation under IRC § 509(a), was established in Oregon and later reorganized in Nevada. It was solely funded by Loren E. Parks and governed by a board consisting of Parks and his two sons. The foundation's primary purposes were to promote sport fishing and hunting, support alternative education, and fund charitable activities. From 1997 to 2000, the foundation spent over $639,000 to produce and broadcast radio messages in Oregon, which were approved by Parks. These messages were often aired in the weeks before elections where ballot measures were under consideration. The messages typically discussed topics related to the measures but did not always explicitly name them. The foundation's tax counsel reviewed some of these messages but did not approve all of them. The foundation was under investigation by the Oregon Attorney General during this period for its radio expenditures.

**Procedural History**

The IRS conducted an examination of the foundation's Forms 990-PF for the years 1997-2000 and determined that the foundation's radio message expenditures were taxable under IRC § 4945, leading to proposed excise tax liabilities. In 2002, the IRS formally requested Parks to correct the expenditures, but he refused. Subsequently, in 2006, the IRS issued notices of deficiency to both Parks and the foundation, asserting excise taxes under IRC § 4945(a) and (b) for the years in question. Both parties petitioned the Tax Court for redetermination, and their cases were consolidated.

**Issue(s)**

1. Whether the expenditures by Parks Foundation for radio messages constituted taxable expenditures under IRC § 4945(d) as attempts to influence legislation or for nonexempt purposes, making the foundation liable for excise taxes under IRC § 4945(a)(1)?

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2. If so, whether the foundation was liable for additional excise taxes under IRC § 4945(b)(1) for failing to timely correct the expenditures?
3. Whether Parks, as a foundation manager, was liable for excise taxes under IRC § 4945(a)(2) for knowingly agreeing to the expenditures?
4. Whether Parks was liable for additional excise taxes under IRC § 4945(b)(2) for refusing to correct the expenditures?
5. Whether IRC § 4945 and its regulations, as applied to the petitioners, violate the First Amendment or are unconstitutionally vague?

**Rule(s) of Law**

1. IRC § 4945(d)(1) and (e) define taxable expenditures as those made to influence legislation, which includes attempts to affect the general public's opinion or communication with legislative bodies.
2. IRC § 4945(d)(5) treats expenditures for purposes other than those specified in IRC § 170(c)(2)(B) (e. g. , religious, charitable, educational) as taxable expenditures.
3. IRC § 4945(a)(1) imposes a 10% tax on the foundation for taxable expenditures, and IRC § 4945(a)(2) imposes a 2. 5% tax on a foundation manager who knowingly agrees to such expenditures.
4. IRC § 4945(b)(1) and (b)(2) impose a 100% and 50% tax, respectively, if taxable expenditures are not corrected within the taxable period.
5. Treas. Reg. § 53. 4945-2(a)(1) clarifies that expenditures are attempts to influence legislation if they are direct or grass roots lobbying communications, except for nonpartisan analysis or technical advice.

**Holding**

1. The court held that the foundation's expenditures for all radio messages, except for one in 2000 and one in 1999, were taxable under IRC § 4945(d)(1) as attempts to influence legislation, and under IRC § 4945(d)(5) as not being for exempt purposes.
2. The court sustained the excise tax liabilities under IRC § 4945(a)(1) and (b)(1) for the foundation, except for the expenditure on the first 2000 radio message.
3. The court sustained the excise tax liabilities under IRC § 4945(a)(2) and (b)(2) for Parks, except for the expenditure on the first 2000 radio message.
4. The court found that IRC § 4945 and its regulations were constitutional as applied to the petitioners and not unconstitutionally vague.

**Reasoning**

The court analyzed the radio messages to determine if they were lobbying communications under the IRS regulations. The messages were found to refer to ballot measures by using terms widely associated with them or describing their content and effects. The court rejected the argument that these messages were nonpartisan analysis or educational, as they did not provide a full and fair exposition of facts and often contained distortions or inflammatory language. The court also applied the legal test from Regan v. Taxation With Representation of Washington,

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which allows Congress to limit the use of tax-deductible contributions for lobbying without infringing on First Amendment rights. The court concluded that the excise taxes were a rational means of preventing the subsidization of lobbying, and the regulations provided sufficient notice of proscribed conduct.

The court addressed counter-arguments by considering the foundation's claim that the radio messages were educational. However, the court found that the messages failed to meet the criteria for educational content as defined in Rev. Proc. 86-43 and the regulations. The court also dismissed the petitioners' constitutional challenges, holding that the excise taxes were a form of subsidy limitation rather than a direct restriction on speech, and thus did not trigger strict scrutiny under the First Amendment.

**Disposition**

The court sustained the IRS's determination of excise tax deficiencies under IRC § 4945(a) and (b) for both the foundation and Parks, except with respect to the expenditure for the first radio message in 2000. Decisions were to be entered under Tax Court Rule 155.

**Significance/Impact**

This case significantly impacts private foundations by clarifying the scope of taxable expenditures under IRC § 4945. It establishes that expenditures for communications that attempt to influence legislation, even if not explicitly named, are subject to excise taxes. The ruling underscores the IRS's authority to enforce these rules through excise taxes rather than revocation of tax-exempt status, a method deemed more proportionate and effective. The decision also affirms the constitutionality of these taxes as a means to limit the use of tax-deductible contributions for lobbying, upholding the principles established in Regan v. Taxation With Representation of Washington. Subsequent courts have referenced this case when considering the limits of private foundation advocacy and the application of excise taxes.

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