

A Proposal for Direct, Deductible Charitable Contributions

Joel S. Newman*

I. Introduction

Charity when it gets personalized . . . is not “charity” any more, but a real human interest in the family. Americans need the personal touch. A great many people who will turn down an appeal for a charity would respond generously to an appeal for a family.¹

I feel better giving 25 cents to a beggar. I feel sorry for him. I feel more uplifted giving him 25 cents than giving 25 dollars to some impersonal organization.²

It is evening on the last day of the month. The bills are paid. There is food in the house. You get paid again tomorrow. You have one hundred dollars left. Do you give it to the United Way, or do you go downtown and give it to a homeless person?

The United Way is safe and solid. Of course, that huge group of charities under the United Way umbrella may include some you do not like.³ On the other hand, the United Way might well be so conservative that some organizations to which you might have been especially attracted are excluded.⁴ However, it does eliminate the bewildering array of worthwhile charities beseeching your help. Giving to the United Way is almost like giving to all of them.

But the United Way lacks the personal element—the immediate gratification you get from giving your money directly to a human being in need and seeing the happiness in his or her eyes. Why do

* Professor of Law, Wake Forest University; A.B., Brown University; J.D., University of Chicago.

1. Statement of Ellen Buttrick, in F. EMERSON ANDREWS, ATTITUDES TOWARD GIVING 19 (1953).

2. Statement of Arthur Ackerman, in F. EMERSON ANDREWS, ATTITUDES TOWARD GIVING 73 (1953).

3. In *Winn v. Commissioner*, 595 F.2d 1060 (5th Cir. 1979), the taxpayer gave money to a fund earmarked for a missionary rather than giving his money to the church because he knew that some of the general funds contributed to the church would go to the World Council of Churches to which he objected. *Id.* at 1065.

4. See David Horton Smith, *The Role of the United Way in Philanthropy*, in 2 COMMISSION ON PRIVATE PHILANTHROPY AND PUBLIC NEEDS, RESEARCH PAPERS 1353, 1373-75 (1977).

you think that the United Way television commercials spend so much time showing you the specific, individual people who benefit from United Way disbursements? They do so because that personal connection, if they can make it, will inspire people to give more. Television commercials notwithstanding, giving to the United Way, when contrasted to giving to an individual in need, is similar to paying taxes.⁵ Many people would find considerably more pleasure in giving that hundred dollars to a homeless person—to an individual in need, rather than to an impersonal charitable organization.

We know that the government wants to encourage charitable giving. If not, charitable contributions would not be tax deductible.⁶ If the government wants to encourage charitable giving, would it not make sense to encourage the broadest possible range of charitable giving? That way, people who were not inclined to give in one way might well be inclined to give in another way. At the very least, it makes very little sense to put obstacles in the path of a form of charitable giving that is very gratifying to a large number of people—direct gifts to individuals.

In fact, only contributions to charitable organizations are tax

5. Contributing to the United Way is similar to paying taxes in another sense. Both involve coercion. The bulk of United Way contributions are obtained through company pressure on their employees. *Id.* at 1356. See generally Laura S. Stepp, *Focus on Self Has Changed Language of Sacrifice; Charitable Groups Report Attitudes of Giving to Feel Good, Not Giving Until It Hurts*, WASH. POST, March 24, 1991, at A20.

6. I.R.C. § 170. It is conceded that this is an overstatement. The government does not encourage unlimited charitable giving. For example, § 170(b) provides for percentage limitations and § 170(e) limits contributions of appreciated property. Moreover, in this economy, the government cannot afford significant increases in charitable giving, although otherwise desirable, since they would reduce tax revenues and enlarge the deficit. However, neither the statutory limitations on charitable deductions nor current budgetary constraints take away from the essential point that it is, and should be, in the interest of the government to encourage charitable giving.

In resting the discussion on the premise that the charitable contributions deduction is a subsidy to encourage charitable giving, other theories are given short shrift. See, e.g., Mark P. Gergen, *The Case for a Charitable Contribution Deduction*, 74 VA. L. REV. 1393 (1988). First, even those who espouse alternative theories would agree that the deduction functions significantly as a subsidy for charitable giving. *Id.* at 1396. Second, the considerations that drive many of the other theories are also effectively addressed by the proposals made here. For example, some theories hold that the tax base should be that income which is actually used for personal consumption. See the definitions of "standard of living" income and consumption in DAVID F. BRADFORD ET AL., *BLUEPRINTS FOR BASIC TAX REFORM* 30-31 (1984). Charitable contributions should be deducted since they are consumed by someone else. William D. Andrews, *Personal Deductions in an Ideal Income Tax*, 86 HARV. L. REV. 309, 346 (1972). However, they should not be deducted if the charitable contribution is a disguise for the taxpayer's own consumption. Peter J. Wiedenbeck, *Charitable Contributions: A Policy Perspective*, 50 MO. L. REV. 85, 87-91 (1985). Contributions such as the ones espoused here would pass that test as well. It is submitted that at least Proposal One would have sufficient safeguards against disguised personal consumption. See *infra* text p. 227.

deductible; those to individuals, however needy, are not.⁷ Moreover, it does not matter that a contribution to a needy individual who is the intended beneficiary of a charitable organization will thereby save that organization money.⁸ The contribution must be directly made to the organization.

Why would a rational government that desired to maximize contributions to charity choose such a rule? The actual, historical reasons will be discussed below. However, the two reasons that make sense involve problems of monitoring and the efficiency of the deduction as a tax expenditure.

It is one thing to give a tax break to a bona fide contributor to a bona fide charity. It is quite another if either the contributor or the charity is lying. Charitable contributions must be monitored for the sake of the government and the donors.⁹ The government cannot monitor millions of donors and donees, but it can monitor thousands of certified charitable organizations.¹⁰ Arguably, restricting deductible contributions to a finite list of charitable organizations is the only way that the whole scheme can be administered.

If charitable contributions to individuals were deductible, people would claim deductions for gifts to the natural, individual objects of their bounty—their relatives and friends. But what could be wrong with that, as long as those relatives and friends were truly needy and the proper objects of charity?¹¹ If the government wants to support people in need, should it matter from whom the support comes?

It matters because of efficiency. The charitable contribution deduction is a tax expenditure.¹² As such, it is justified if its benefits

7. See *infra* notes 14-26 and accompanying text; Peter J. Wiedenbeck, *Charitable Contributions: A Policy Perspective*, 50 MO. L. REV. 85, 105-08 (1985).

8. *Thomason v. Commissioner*, 2 T.C. 441, 444 (1943); Murray Davenport, P-H Memo TC ¶ 75,369.

9. See Leslie G. Espinoza, *Straining the Quality of Mercy: Abandoning the Quest for Informed Charitable Giving*, 64 S. CAL. L. REV. 605 (1991).

10. In 1985, there were more than 300,000 charitable organizations. Dean Pappas, *The Independent Sector and the Tax Laws: Defining Charity in an Ideal Democracy*, 64 S. CAL. L. REV. 461 (1991). Some claim that the IRS does not adequately monitor charitable organizations either. *The Donee Group Report & Recommendations*, in 2 COMMISSION OF PRIVATE PHILANTHROPY AND PUBLIC NEEDS: RESEARCH PAPERS (1977).

11. If individuals could receive deductions for contributions, there would be a temptation for donors to claim that their relatives and friends were deserving subjects of charity even when they were not. This temptation would exacerbate the administrative burden caused by the deductibility of contributions to individuals.

12. See generally Stanley S. Surrey & Paul R. McDaniel, *The Tax Expenditure Concept and the Budget Reform Act of 1974*, 17 B.C. IND. & COMM. L. REV. 679 (1976); Jonathan B. Forman, *Origins of the Tax Expenditure Budget*, 30 TAX NOTES 537 (Feb. 10, 1986).

outweigh its costs.¹³ However, only those benefits that are purchased by those costs should count. Therefore, the only benefits to measure are those contributions to charity that would not have been made but for the tax deduction. By this logic, a deduction is wasted every time a deduction is taken for a charitable contribution that would have been made even without the deduction.

Arguably, people would contribute to their needy relatives, and perhaps their friends, even if no tax deduction existed. Accordingly, it would be a waste to allow a charitable deduction for such contributions. However, if deductible contributions can only be made to charitable organizations, and the donor cannot tell the organization what to do with the money, then a donor cannot possibly receive a charitable contribution deduction for money that will go directly to a relative or friend. Thus, the potential waste is eliminated.

However, what if a bona fide charitable organization were to investigate potential individual charitable donees and certify the ones that were truly in need? If an individual was certified, a donor could choose a particular individual from this list. After the charitable organization had determined that the donor and the donee were not related, the donor could contribute directly to the individual. Should such contributions be deductible?

This scheme would alleviate the legitimate governmental concerns with individual donees. First, there would be no increased monitoring problems. The government would only have to monitor the charitable organizations. There would be no additional burden because the government presently monitors these organizations. The charitable organizations themselves would monitor the individual donees in terms of the donee's initial eligibility for charity and the subsequent use of the donated funds. Neither the government nor the donor would be in danger of being defrauded. Second, the efficiency problem could be essentially solved if the charitable organization made sure that donor and donee were not related. Donors could enjoy the additional gratification that comes from direct donations to individuals, without harm to the government.

This Article will describe the history of the nondeductibility of donations to individuals and discuss the relevance of recent case law on earmarked contributions to missionaries. It will then describe the

13. It is generally felt that the charitable contribution is an efficient tax expenditure, and that charitable contributions are indeed sensitive to tax deductibility. See CHARLES T. CLOTFELTER, *FEDERAL TAX POLICY AND CHARITABLE GIVING* (1985) and JERALD ALAN SCHIFF, *CHARITABLE GIVING AND GOVERNMENT POLICY* (1990).

operations and tax status of some of the major sponsorship charities, which promote the feeling, and sometimes the reality, of a direct contribution to an individual — be it a child or a whale. The Article will conclude with proposals for two alternative forms for deductible direct contribution schemes and will explain the advantages and disadvantages of each formula.

II. Early History

A. General Case Law

“Charity” connotes a contribution to a public, indefinite donee.¹⁴ Thus, a contribution to an individual cannot be deductible because it is not even a contribution to “charity” in the first place. However, this definition of “charity” predates the tax laws by centuries.¹⁵ Whether the definition makes any sense in terms of current tax law is questionable.¹⁶

The need for a definition of “charity” originally arose from a problem with the interpretation of wills and trusts.¹⁷ When wills specified that a bequest was to go to “charity,” the executors needed guidance.¹⁸ The question was an important one, for the donor was no longer available, and the executor might have been prone to shade any necessary interpretation in a self-interested manner.¹⁹ Moreover, the most likely donees were probably not in a position to protect their interests.²⁰

The concept of public charity was intertwined with love, unselfishness, the public good, and governmental benefit. In a passage often quoted from a Third Circuit opinion:

Charity, derived from the Latin *caritas*, originally meant love. In the thirteenth chapter of first Corinthians the revised version

14. *Russell v. Allen*, 107 U.S. 163, 167 (1882). “[C]harity begins where certainty in beneficiaries ends.” *Thomason v. Commissioner*, 2 T.C. 441, 443 (1943).

15. See generally Statute of Charitable Uses, 43 Eliz. I c. 4 (1601); RESTATEMENT (SECOND) OF TRUSTS § 375 (1957); GARETH H. JONES, HISTORY OF THE LAW OF CHARITY 1532-1827 (1969); P.S. Atiyah, *Public Benefit in Charities*, 21 MOD. L. REV. 138 (1958); Laura Brown Chisolm and Dennis R. Young, *Introduction: What is Charity?*, 39 CASE W. RES. L. REV. 653 (1988); Leslie G. Espinoza, *Straining the Quality of Mercy: Abandoning the Quest for Informed Charitable Giving*, 64 S. CAL. L. REV. 605, 636-39 (1991); Kenneth Liles and Cynthia Blum, *Development of the Federal Tax Treatment of Charities*, 39 LAW & CONTEMP. PROBS. 6 (1975).

16. Mark A. Hall and John D. Colombo, *The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption*, 66 WASH. L. REV. 307, 333-40 (1991).

17. JONES, *supra* note 15, Ch. III.

18. JONES, *supra* note 15, Ch. III.

19. JONES, *supra* note 15, at 20.

20. JONES, *supra* note 15, at 20.

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 personal, private, or selfish." . . . 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 . . . has defined a charitable trust as "a gift to a general public use which extends to the poor as well as to the rich." . . . 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."²¹

The definition of "charity" as public charity led to cases that the courts and the Service could determine easily. *James Sprunt Benevolent Trust*²² concerned a trust established "for the temporal support of a son or grandson or a blood relation who will be called to the Gospel Ministry of the Southern Presbyterian Church."²³ The Board of Tax Appeals held that the charitable purpose was not sufficiently public and denied the tax exemption.²⁴

In *Dubois*,²⁵ the taxpayer formed a corporation organized exclusively for charitable purposes. The corporation distributed money to charitable corporations.²⁶ In addition, it contributed \$1800 to the widow of the taxpayer's brother for board and maintenance, \$360 to the taxpayer's mother's cousin for board and maintenance, and \$551

21. *Bok v. McCaughn*, 42 F.2d 616, 618-19 (3d Cir. 1930) [citations omitted]. The quoted passages also suggest, in relating charity to love and unselfishness, that there is a moral aspect to charity. Should only morally desirable contributions be deductible? If so, would contributions to individuals be nondeductible since they are selfish and hence less morally desirable? First, moral considerations should be irrelevant to a tax regime in a pluralistic society. See Joel S. Newman, *The Deductibility of Nondiscretionary Personal Expenses*, 6 AM. J. TAX POLICY 211, 228-29 (1987). Second, selfishness is relevant only in efficiency terms—the idea that selfishness might lead one to contribute even were there no deduction. Of course, in cases of more measurable selfishness, there would be a quid pro quo that would defeat the deduction.

22. 20 B.T.A. 19 (1930).

23. *Id.* at 24.

24. *Id.* at 27.

25. 31 B.T.A. 239 (1934).

26. *Id.*

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

to the taxpayer's mother's former maid and companion for nursing and hospital care.²⁷ The Board of Tax Appeals denied the charitable deductions for contributions to the corporation because some of its disbursements had not been for charitable purposes.²⁸

In *Tilles v. Commissioner*,²⁹ the taxpayer donated \$200 to a fund to provide for the musical education of Anna Poe, a store clerk who had shown potential as a musician.³⁰ The court had no trouble denying the charitable deduction because the contribution was for the benefit of an individual.³¹

In *I.T. 3549*,³² co-workers organized a trust fund to defray the medical and travelling expenses of their sick colleague. The Service ruled that contributions to the fund were nondeductible, relying on *Tilles* to support its decision.³³

In *Thomason v. Commissioner*,³⁴ the taxpayer took in a child from the Children's Home Society on a trial basis with the understanding that the Society would still be legally obligated for the child's support.³⁵ The taxpayer raised the boy for twelve years and then returned him to the Society.³⁶ However, he made a commitment to the Society to continue to pay for the boy's support until he reached the age of majority.³⁷ The Tax Court denied a charitable contribution deduction, commenting that it was not sufficient "that the sums relieved the Society from some financial burden."³⁸

As evidenced by this early case law, it was settled that direct donations to individuals were gifts and not contributions. Therefore, these donations were not deductible.³⁹ There was little left to litigate except for the occasional issue of precatory language—whether the donor had irrevocably directed that the donation go to an individual or had merely expressed that desire.⁴⁰

27. *Id.*

28. *Id.*

29. 38 B.T.A. 545 (1938), *aff'd*, 113 F.2d 907 (8th Cir. 1940), *cert. denied*, 311 U.S. 703 (1940).

30. *Id.* at 546.

31. *Id.* at 550-51.

32. 1942-1 C.B. 79.

33. *Id.* at 80.

34. 2 T.C. 441 (1943).

35. JONES, *supra* note 15, at 442.

36. JONES, *supra* note 15, at 442.

37. JONES, *supra* note 15, at 442.

38. *Thomason v. Commissioner*, 2 T.C. 444, 444 (1943).

39. Gifts are nondeductible to the donor and taxfree to the donee. I.R.C. § 102. However, the motivations for gifts are the same as those for contributions to charity. See *Sarah Marquis v. Commissioner*, 49 T.C. 695 (1968); James W. Colliton, *The Meaning of "Contribution or Gift" for Charitable Contribution Deduction Purposes*, 41 OHIO ST. L.J. 973 (1980).

40. In *Peace v. Commissioner*, 43 T.C. 1 (1964), the taxpayer sent 23 checks to the

B. Missionaries

1. *General Background.*—Missionaries were a special case and posed various issues that made litigation necessary.⁴¹ First, missionaries and other religious persons occasionally take vows of poverty. Such vows led to the issue of whether the missionary was the appropriate donee or merely a conduit.⁴²

Even without a vow of poverty, missionaries are not ultimate donees. A scholarship given to a student, medicine given to an invalid, or food given to a hungry person are consumed directly by the recipient, and the matter is solved. However, the missionaries work not for themselves, but for their religious organizations. Resources given to them are used not only by them, or even predominantly by them, for their own benefit. Instead, they are used to further their work for the religious organization and thereby for the good of a larger public.⁴³

Thus, missionaries might be “agents” of their churches, in a way that a poor person is not an “agent” of a welfare organization.⁴⁴ Similarly, even if payments to missionaries are not payments directly

Sudan Interior Mission, writing the names of four individual missionaries on the checks. *Id.* at 3. The contributions were held deductible, and the court noted that the designations of individual missionaries were merely precatory. *Id.* at 7. In the same year, in *Tripp v. Commissioner*, 337 F.2d 432 (7th Cir. 1964), the taxpayer sent money to a college, with an accompanying note saying that he knew that the contribution would be deductible only if its use were unspecified, but that if it could be applied toward the tuition of one Robert Roble, it would be constructive. *Id.* at 435. The college posted the money to Roble’s tuition account. *Id.* at 435-36. The court denied the deduction, noting that the college never awarded Roble a scholarship and that it came directly from the taxpayer. *Id.* at 436. It is difficult to reconcile these cases.

41. *Davis v. United States*, 110 S. Ct. 2014 (1990); *Brinley v. Commissioner*, 782 F.2d 1326 (5th Cir. 1986); *White v. United States*, 725 F.2d 1269 (10th Cir. 1984); *Winn v. Commissioner*, 595 F.2d 1060 (5th Cir. 1979); *Smith v. Commissioner*, 60 T.C. 988 (1973); *Peace v. Commissioner*, 43 T.C. 1 (1964); *David Cook*, P-H Memo TC ¶ 78,179; *Thomas Lesslie*, P-H Memo TC ¶ 77,111; *Murray Davenport*, P-H Memo TC ¶ 75,369; *L.F. Ratterman*, P-H Memo TC ¶ 48,130.

42. *Cox v. Commissioner*, 297 F.2d 36 (2d Cir. 1961). (No estate tax deduction for bequest to son who had taken a vow of poverty because the language of the bequest was to the son and no mention of the vow of poverty was made.); *L.F. Ratterman*, P-H Memo TC ¶ 48,130 (holding that donation to taxpayer’s son, who was a Jesuit priest and had taken a vow of poverty, was deductible with virtually no discussion).

43. In *White v. United States*, 725 F.2d 1269, 1271-72 (10th Cir. 1984), the court distinguished other individual charitable donee cases from missionary cases, commenting: “In most of those cases the contribution served the charitable organization only by eliminating the need of one possible object of the organization’s bounty. A student whose educational or living expenses are paid by such a contribution is not serving the charitable organization.”

44. In *Thomas Lesslie*, P-H Memo TC ¶ 77,111, checks payable to the taxpayer’s missionary neighbor were held deductible because the missionary was the agent of a church, a § 501(c)(3) organization. In *Brinley v. Commissioner*, the Fifth Circuit noted the missionary’s status as an agent of the Church, but commented that such status was much less important than the control test. 782 F.2d 1326, 1335 (5th Cir. 1986). See *infra* note 61 for the control test.

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

“to” their churches, they might be indirect payments “for the use of” the church.⁴⁵ Finally, when missionaries pay their food, clothing, and shelter expenses while away from home⁴⁶ on a religious mission, those payments are out-of-pocket expenses incident to charitable work and are therefore deductible.⁴⁷ Even if another individual paid those expenses, until the *Davis* case in 1990,⁴⁸ at least a colorable argument could be asserted that those expenses were deductible.⁴⁹ Missionaries, therefore, presented special problems and gave rise to more case law.

2. *Mormon Missionaries.*—Eventually, most churches arranged for contributions for missionary work to be made directly to the mother church.⁵⁰ This system ensured that the contributions were totally under its control and thereby deductible. However, the Mormon church did not operate in this manner. For its 25,000 missionaries each year, it computed an annual stipend based upon a frugal missionary lifestyle and asked the missionary’s parents to pay the stipend directly to their child.⁵¹ The missionaries were required to submit weekly financial reports.⁵² However, the church had no formal, legal control over the money.⁵³ The Mormons had religious and traditional reasons for their direct contribution scheme.⁵⁴ Direct contributions encouraged commitment and frugality from the missiona-

45. I.R.C. § 170(c). For discussion of the meaning of the statutory phrase “for the use of,” see *Winn v. Commissioner*, 595 F.2d 1060 (5th Cir. 1979); *Bauer v. United States*, 449 F. Supp. 755 (W.D. La. 1978), *aff’d*, 594 F.2d 44 (5th Cir. 1979); *Smith v. Commissioner*, 60 T.C. 988 (1973); *Thomason v. Commissioner*, 2 T.C. 441 (1943); *Sherman Sampson*, P-H Memo TC ¶ 82,276; *Murray Davenport*, P-H Memo TC ¶ 75,369; *Joel S. Newman*, *The Inequitable Tax Treatment of Expenses Incident to Charitable Service*, 47 *FORDHAM L. REVIEW* 139, 148-50 (1978).

46. In *Brinley v. Commissioner*, 782 F.2d 1326, 1334 (5th Cir. 1986), a missionary was held to have shifted his tax home from his normal residence to the site of his missionary work. Therefore, meals and lodging expenses were nondeductible.

47. Treas. Reg. § 1.170A-1(g). In *Brinley*, the court commented:

We agree that deductible donations to a charitable organization must not be restricted for the benefit of a particular individual. . . .

A different situation arises, however, where an individual contributes services to a qualified organization.

Brinley, 782 F.2d at 1332. See also Rev. Rul. 58-279, 58-1 C.B. 145; *Rockefeller v. Commissioner*, 676 F.2d 35 (2d Cir. 1982); *Smith v. Commissioner*, 60 T.C. 988 (1973); *Sherman Sampson*, P-H Memo TC ¶ 82,276. See generally *Newman*, *supra* note 45.

48. *Davis v. United States*, 110 S. Ct. 2014 (1990).

49. *White v. United States*, 725 F.2d 1269, 1271-72 (10th Cir. 1984).

50. Telephone Interview with Nelda Ammous, Office Supervisor, U.S. Relations Department, Assemblies of God Division of Foreign Missions (Jan. 28, 1992).

51. *Davis v. United States*, 110 S. Ct. 2014 (1990).

52. *Id.* at 2017.

53. *Id.*

54. *Id.*

ries, preserved the tradition of an unpaid lay missionary, and made the donors feel more involved with the missionaries' efforts.⁵⁵

These Mormon missionary financial arrangements led to three cases, *Brinley v. Commissioner*,⁵⁶ *White v. United States*,⁵⁷ and *Davis v. United States*.⁵⁸ Many issues were raised in these cases, including: (1) whether the missionaries were "agents" of the church; (2) whether the missionaries' tax home shifted to the situs of the missionary work; (3) how contributions "for the use of" the church were to be defined; and (4) whether an individual other than the person performing charitable work could receive a deduction for paying the out-of-pocket expenses incident to that work.⁵⁹

Two tests rose to prominence in those cases. The first was the "benefit" test—payments were deductible only if the primary beneficiary was the charity and not the donor or the individual donee.⁶⁰ The second was the "control" test—payments to individual beneficiaries were deductible only if the charity maintained a requisite amount of control over them.⁶¹

55. *White v. United States*, 725 F.2d 1269, 1270 (10th Cir. 1984).

56. 782 F.2d 1326 (5th Cir. 1986).

57. 725 F.2d 1269 (10th Cir. 1984).

58. 861 F.2d 558 (9th Cir. 1989), *aff'd*, 495 U.S. 472 (1990).

59. These three cases have generated extensive commentary. Conrad Teitell, *Earmarked Charitable Gifts*, 117 TRUSTS AND ESTATES 439 (1978); Ronald A. Blasi and Richard A. Denesha, *Avoiding Disallowance of Earmarked Charitable Contributions* 9 REV. TAX'N INDIV. 160 (1985); J. Martin Burke and Michael K. Friel, *Recent Developments in the Income Taxation of Individuals*, 10 REV. TAX'N INDIV. 378 (1986); K.C. Jensen, *Tax Deductions for Payments to Mormon Missionaries*, 4 B.Y.U. J. PUB. L. 115 (1990); Dave N. Stewart et al., Hernandez and Davis: *Has the U. S. Supreme Court Resolved the Controversy Involving Charitable Contributions?*, 15 REV. TAX'N INDIV. 39 (1991); Note, *Does Charity Begin at Home? Tax Status of Payment to an Individual as a Charitable Deduction*, 83 MICH. L. REV. 1428 (1985); David L. Herron, Note, *A Tax Deduction for Direct Charitable Transfers: The Case Against Davis v. United States*, 64 WASH. L. REV. 935 (1989); Michael R. Noble, Note, *Earmarked Charitable Contributions: In Search of a Standard*, 50 MO. L. REV. 918 (1985); Christine O'Connor, Comment, *White v. United States: Tenth Circuit Allows Parents' Charitable Contribution' Deduction for Support Payments Made Directly to Mormon Missionary Son*, 62 DENV. U. L. REV. 331 (1984); Lori A. Tobias, Note, *Brinley v. Commissioner: A Modified Charitable Deduction Standard for Missionary Support Payments*, 40 SW. L.J. 1267 (1987).

60. The Tenth Circuit adopted the benefit test and rejected the control test. *White v. United States*, 725 F.2d 1269, 1271 (10th Cir. 1984). Prior cases discussing a benefit test include: *Babilonia v. Commissioner*, 681 F.2d 678 (9th Cir. 1982); *Oppewal v. Commissioner*, 468 F.2d 1000 (1st Cir. 1972); *Sheffels v. United States*, 264 F. Supp. 85 (E.D. Wash. 1967), *aff'd*, 405 F.2d 924 (9th Cir. 1969) David Hamilton, P-H Memo TC ¶ 79,186. See generally Newman, *supra* note 45. For a different sort of benefit analysis, see *Hernandez v. Commissioner*, 490 U.S. 680 (1989).

61. The Fifth Circuit approved both the control test and the benefit test as alternative routes to deductibility. *Brinley v. Commissioner*, 782 F.2d 1326, 1331, 1334-35 (5th Cir. 1986). For prior case law discussing a control test, see *Winn v. Commissioner*, 595 F.2d 1060 (5th Cir. 1979); *Bauer v. United States*, 449 F. Supp. 755 (W.D. La. 1978), *aff'd*, 594 F.2d 44 (5th Cir. 1979); *Smith v. Commissioner*, 60 T.C. 988 (1973); *Peace v. Commissioner*, 43 T.C. 1 (1964); *Sherman Sampson*, P-H Memo TC ¶ 82,276; *David Cook*, P-H Memo TC ¶ 78,179;

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

When the *Davis* case went before the Supreme Court, it was expected that the Court might give its imprimatur to one of these tests. However, it declined to do so. It held that “for the use of” means “in trust for” and nothing more,⁶² and that only the individual performing the charitable work can deduct the incidental expenses thereof.⁶³

Since *Davis* is the only recent Supreme Court opinion on charitable deductions for contributions to individual donees, it is considered the primary authority on this issue. By affirming the Ninth Circuit, the Court confirmed that the beneficiary of a charitable contribution must be indefinite.⁶⁴ However, since the case is limited to a missionary fact pattern, the opinion sheds little light on the broader question. The issues that it resolved apply peculiarly to religious missionaries, as opposed to ultimate donees.

Yet, the opinion is significant because it indicates the Court’s concerns with administering the statute and protecting the government from abuse. In commenting on “for the use of,” the Court noted:

Moreover, petitioners’ interpretations would tend to undermine the purpose of § 170 by allowing taxpayers to claim deductions for funds transferred to children or other relatives for their own personal use. Because a recipient of donated funds need not have any legal relationship with a qualified organization, the Service would face virtually insurmountable administrative difficulties in verifying that any particular expenditure benefited a qualified donee. Cf. § 170(a)(1). Although there is no suggestion whatsoever in this case that the transferred funds were used for an improper purpose, it is clear that petitioners’ interpretation would create an opportunity for tax evasion that others might be eager to exploit.⁶⁵

As to the question of who must pay the incidental expenses to obtain the deduction, the Court stated:

Petitioners’ interpretation not only strains the language of the statute, but would also allow manipulation of §1.170A-1(g) for tax evasion purposes. For example, parents might be tempted to transfer funds to their children in amounts greater than

Murray Davenport, P-H Memo TC ¶ 75,369.

62. *Davis v. United States*, 110 S. Ct. 2014, 2018-23 (1990).

63. *Id.* at 2023-24.

64. *Id.* at 2018. See also Tech. Adv. Mem. 32-141-91 (August 29, 1991) (regarding estate tax).

65. *Davis*, 110 S. Ct. at 2023-24.

needed to reimburse reasonable expenses incurring in donating services to a charity. Parents and children might attempt to claim a deduction for the same expenditure. Controlling such abuses would place a heavy administrative burden on the Service, which would not only have to monitor the taxpayer's records, but also correlate them with the records of the third party. To the extent petitioners' interpretation lessens the likelihood that claimed charitable contributions actually served a charitable purpose, it is inconsistent with § 170.⁶⁶

If the monitoring problems could be solved, and if the burden of the monitoring could be borne by charitable organizations rather than the Service, it would seem that the Supreme Court's concerns would be alleviated.

III. Sponsorship Organizations

A number of charitable organizations currently achieve a type of earmarking of contributions through sponsorship schemes. Most of these organizations cater to the needs of impoverished children, both in the United States and in other countries. All are tax exempt organizations to which contributions are fully deductible.⁶⁷ Therefore, they are a good place to start when searching for a way to obtain the marketing advantages of direct contributions without harming legitimate governmental interests.

A. Child Sponsorship

Six organizations sponsor over 1,250,000 children in as many as forty countries.⁶⁸ Each donor chooses to sponsor a specific child.⁶⁹

66. *Id.* (citations omitted).

67. *See infra* notes 82, 84 and accompanying text.

68. Pamphlet, Children International, *Sponsorship: A Special Kind of Love* (1989); Pamphlet, Christian Children's Fund, *Fighting Worldwide Poverty: A Strategy For The 90's* (1990); Pamphlet, Compassion International (1991); Pamphlet, Futures for Children (1990); Pamphlet, Save the Children, *What Sponsoring a Child Can Mean . . . To You and A Child Who Needs Your Help* (1990); Pamphlet, World Vision, *An Overview* (1989) (all materials on file at the Dickinson Law Review office).

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

No other donor sponsors the same child.⁷⁰ The donor can specify the gender of the child and the area of the world, or the specific country in which the child resides.⁷¹ Alternatively, the donor can agree to sponsor a child who lives in the area most in need.⁷² The organization then selects a child and sends the donor the child's name, photograph, and a brief description of the child.⁷³ The donor sends a fixed contribution, which ranges from twelve to twenty-five dollars a month.⁷⁴ The donor may correspond with the sponsored child and receives regular reports from the organization as to the child's progress.

1. *Pooling Arrangements.*—In four of the organizations,⁷⁵ the donor's contributions are not sent directly either to the child or to the child's parents. Instead, they are pooled with contributions of other donors for children in the same community.⁷⁶ These pooled funds are then used by the charitable organization to benefit all of

Organization	# Children Sponsored	# Countries
Children International	150,000	10
Christian Children's Fund	500,000	28
Compassion International	150,000	27
Futures for Children	2700	1 (Indian children in Ariz. & N. Mexico)
Save the Children	100,000	40
World Vision, Inc.	404,638 by U.S. citizens 909,350 Worldwide	89

69. See *supra* note 68.

70. See *supra* note 68.

71. See *supra* note 68.

72. See *supra* note 68.

73. See *supra* note 68.

74.

Organization	Monthly Contribution
Children Int'l	\$12
Christian Children	21
Compassion Int'l	21*
Futures for Children	25
Save the Children	20
World Vision	20

* Compassion International will also establish a "living sponsorship" arrangement. A one-time contribution of \$4,000 creates an endowment, the interest from which is sufficient to sponsor one child. When the sponsored child reaches adulthood, the funds are used to sponsor another child, and so on.

75. Pamphlets for Children International, Christian Children's Fund, Save the Children, and World Vision (all materials on file at Dickinson Law Review office).

76. *Id.*

the children, through schooling, medicine, and community projects.⁷⁷

In one of the organizations, donors may send extra contributions to be used for holiday gifts for the sponsored child.⁷⁸ However, the organization does not turn over even these funds to the child.⁷⁹ Instead, it pools this money in a separate account and uses it to buy holiday gifts for all of the children in the community if the funds are sufficient.⁸⁰ If the funds are insufficient, they are returned to the general pooled fund for that community.⁸¹

There can be no doubt that these pooling arrangements are legitimately tax deductible. First, the IRS has ruled that they are legitimate.⁸² Second, the money does not go directly to individual donees; the beneficiary is indeed indefinite, and a bona fide charitable organization spends it for the public good. These pooling arrangements are described with varying degrees of candor in the charitable organizations' pamphlets and in their submissions to the government.⁸³ However, they provide at least the appearance of a contribu-

77. *Id.*

78. Pamphlet, Children International, *Sponsorship: A Special Kind of Love*, at 8-9.

79. *Id.*

80. *Id.*

81. Pamphlet, Children International, *Sponsorship: A Special Kind of Love*, at 8-9; Letter dated to Joel Newman from attorney Thomas R. Willy, attorney for Children International of 1/24/91.

82. Children International: Determination letter effective January 1, 1971 re Holy Land Mission (predecessor organization). Christian Children's Fund (Letter from IRS District Director to Christian Children's Fund, Form MAR-1861 of 8/9/85); Letter from J. Simonik, IRS Disclosure Officer, Baltimore, Md., to M. Murphy, Wake Forest Law Library of 6/11/91; Save the Children Federation, Inc.: Form 6977 dated July 15, 1964; World Vision, Inc. (Letter from F. Miraflor, Disclosure Assistant, IRS Los Angeles, to Wake Forest Law School of 5/14/91).

83. *Information to the Public*

Children International

Benefits and services are purchased specifically for your individual sponsored child. In most projects, items such as food, clothing or school supplies can almost always be bought much more cheaply when purchases are made, we are able to give your child substantially more food for the same amount of money than if his family had bought it themselves.

Where appropriate, other projects are implemented that, in addition to directly benefiting your child, also benefit the neighborhood. . . .

Pamphlet, Children International, *Sponsorship: A Special Kind of Love*, at 4-5.

Q. May I send gifts to my child at Christmas. . . ?

A. . . .

When we receive your monetary gift, it is placed into a special birthday, Easter or Christmas fund along with gifts from other individual sponsors. This way your child, and all our children, will receive presents.

Id. at 8-9.

Christian Children's Fund. The 1990 Annual Report does not say specifically whether or not donations are pooled. However, most of the services described are educational, including adult education. Classroom, as opposed to one-on-one ed-

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

tion to a direct donee, and they do it in a deductible way.

2. *Direct Disbursements.*—Two organizations, Compassion International, Inc. and Futures for Children, Inc., appear to disburse funds directly to individual children. If they do, contributions to these organizations should not be deductible. However, contributions to both organizations are fully deductible.⁸⁴

Futures for Children, Inc. is a child sponsorship organization, similar to all the others except in one respect. An attachment to their application to the IRS states that “[t]he annual contribution of \$240 is distributed as follows: 56.6% of it, or \$136 per year, is paid in a *direct cash benefit to the sponsored child.*”⁸⁵

Compassion International, Inc. responded in a letter to this

education suggests pooling.

Save the Children Federation, Inc.

Save the Children believes in help. . .not handouts. So your contribution, combined with those of other sponsors, goes toward community projects and services. . .

Cover Letter to information package (July 1990).

Q. How does Save the Children use my sponsorship contributions to help children?

A. Because nearly 60 years of experience has taught us that direct handouts are the least effective way of helping children, your sponsorship contributions are not distributed in this way. Instead, combined with other sponsors', they are used to help children in the most effective way possible—by helping the entire community with projects such as health care, education, food production and nutrition.

Pamphlet, Save the Children, *What Sponsoring a Child Can Mean. . .to You and and a Child Who Needs Your Help.*, at 6 (1990).

World Vision.

All childcare funds from sponsors are combined so that we may help unsponsored children in the community. Since the cost of living and rate of inflation vary widely from country to country, combining sponsor funds also enables us to provide the same quality of care to all of the children we are helping.

One page information sheet dated September 1987.

Submissions to IRS

Form 1023, Application of Exempt Status, for Save the Children Federation, Inc., in an attachment responding to question 10i, recites language from the organization's Certificate of Incorporation (also attached to the Application) which recites, as a general purpose:

Initiating and helping to develop and operate programs for aid to children and the general improvement of their family and community life, through service to groups and individuals and through specific projects both in the United States and overseas.

Form 1025 for Holy Land Mission, the predecessor of Children International, had no useful information on the nature of their child sponsorship. However, their child sponsorship activities prior to 1971, the year of the application, may have been considerably less significant than they are now.

84. Compassion International, Inc.: IRS Form L-391 dated October 15, 1973. Futures for Children, Inc.: IRS Form L-178 dated March 8, 1978.

85. Futures for Children, Inc. Form 1023, August 29, 1977, Attachment 12 (emphasis added).

writer, "We have always earmarked contributions from specific sponsors for the benefit of their own sponsored child."⁸⁶ The organization's magazine recently printed the following on a page headlined "Compassion Believes in Providing Direct Benefits":

Compassion believes that when sponsors pay to support individual children, programs should result in direct benefits to those children and their families.

Some development agencies consider child development too narrow an approach to meeting a poor family's needs.

Compassion agrees that some problems affecting children are best addressed at a broader level. Indeed, Compassion supports some activities affecting children's families and communities.

In every case, however, sponsored children are the primary intended beneficiaries of Compassion's development efforts.

"The community development approach has its merits, as it helps families in other ways. The big difference is that we truly assist the child the sponsor has a picture of and receives letters from," Stafford [Compassion Kenya country director] said.

"We have a greater impact on an individual and the family rather than letting the help trickle down through community development," he said. "Christ had compassion for the masses, but he helped them one at a time. In addition, we can assure a sponsor that we know the child and are caring for the child."⁸⁷

It seems reasonably clear that Futures for Children earmarks contributions directly to individual children. The picture of Compassion International is considerably murkier, although it does appear that they are trying hard to distinguish themselves from competing organizations by suggesting that the others pool and they do not. Under current law, if the inferences are correct, neither organization should be allowed to receive deductible contributions.

Another interesting issue about Children International exists. Its brochure answers the question, "What if I want to send a gift for a special major project or need?" by stating:

Major gifts over \$100 will be used in their entirety for the purpose intended—perhaps a bed, a major operation or other medical expenses, special dental work, eyeglasses, or help for the

86. Letter from M. Walter, Sponsor Relations, Compassion International to Joel Newman of 2/20/91.

87. Pamphlet, Compassion International, *Compassion Update*, at 7 (January/February 1991).

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

family such as putting a roof on their house, etc. When you send a major gift, please write a note explaining the full intent of your check so that we can be certain to carry out your wishes.⁸⁸

The attorney for the organization writes:

It is Children International's policy to try to use these gifts for the purposes intended by the donor, but the organization retains ultimate control and responsibility for the use of the funds. Generally, the special gift is to meet a need that has been identified by Children International and is consistent with its program objectives.⁸⁹

It is hard to reconcile the deductibility of these major gifts in light of cases like *Tilles*.⁹⁰

B. Other Sponsorship Organizations

Sponsorship is not limited to children. Adopt-A-Whale is a good example of a different type of sponsorship. According to their brochure,⁹¹ for an annual donation of fifteen dollars, a contributor can adopt a particular whale. The brochure furnishes a list of whales, complete with descriptions of their appearance and personalities and photographs of their tails.⁹² "Adoption" means that the organization will send regular reports about the sightings of the particular whale adopted and other information concerning its welfare.⁹³ In addition, information is provided about the welfare of all other whales being monitored by the International Wildlife Coalition.⁹⁴ The donor also receives an adoption certificate.⁹⁵

There is no indication in the brochure that the annual contribution is in any way earmarked for the adopted whale. In fact, it appears much more likely that the money goes to the general charitable work of the organization. However, the organization does work for the welfare of whales, including the ones listed for adoption. Thus, contributors know that their contributions are, at least to some extent, going to the benefit of a particular adopted whale. Again,

88. Pamphlet, Children International, *Sponsorship: A Special Kind of Love*, at 9-10 (rev. November 1989).

89. Letter from Thomas R. Willy to Joel Newman of 1/24/91.

90. *See supra* notes 16-19.

91. Materials mailed to Joel Newman from Whale Adoption Project, International Wildlife Coalition, May 1991 (on file at Dickinson Law Review office).

92. Pamphlet, Whale Adoption list.

93. Pamphlet, Whale Adoption Project, at 4.

94. *Id.*

95. *Id.*

these contributions are fully deductible.⁹⁶

The *Encyclopedia of Associations*⁹⁷ reveals that there are a number of organizations with names that begin with Adopt. The most intriguing is Adopt-a-Cow, which was a short-lived organization involved in the effort to help farmers afflicted by drought.⁹⁸ At any rate, the number of these organizations attests to the success of the marketing principle that charitable contributions are more pleasant if they are supposedly directed toward a specific, known, needy individual, human or not.

IV. Two Proposals for Direct Contributions

All of the sponsorship organizations described above should be allowed to receive fully deductible contributions. If current law would deny that deductibility in some cases, then current law should be changed. All of these arrangements are demonstrably successful at making charitable giving pleasurable, and none of them poses any legitimate concern to the government. Congress would be well advised to amend the law to make direct contributions through sponsorship agencies clearly deductible. Two possible proposals would give Congress the means to make the contributions deductible.

A. *Proposal One*

Proposal One involves giving the congressional imprimatur to what is apparently being done already by some child sponsorship agencies. The organization selects a slate of deserving donees. The donor then chooses one and sends a contribution to the organization. The organization either disburses the money directly to the donee, or spends it for the donee's benefit.

B. *Proposal Two*

The charitable organization would do nothing other than to investigate and certify deserving individual donees. Donors could then give direct, deductible contributions to them. Perhaps each certified

96. One might argue that the contributions were actually used to purchase the service of having the travels of a particular whale monitored for the benefit of a contributor. Therefore, there would be a corresponding quid pro quo and no deductible contribution. It is doubtful that this argument would succeed with Adopt-a-Whale, though it might come closer to the mark when one pays a set sum to an organization to plant a particular tree in a particular place, even if that place was public land.

97. *Encyclopedia of Associations* (D. Burek, ed., 25th ed.) (1991).

98. Telephone Interview with P. Miller, paralegal for Rep. Mike Rose, concerning the Farmer Assistance Relief Mission (January 3, 1991).

DEDUCTIBLE CHARITABLE CONTRIBUTIONS

donee could be given special receipts. Contributions to individuals would be deductible only if those receipts were attached to the tax return.

C. Advantages and Disadvantages of Each Proposal

In Proposal One, the organization protects both the government and the donor from fraud by conducting careful investigations to make sure that its slate of donees is truly in need. Also, the organization can monitor the donor's behavior to make sure that the donor spends the money wisely. Further, the organization could ensure, if it were considered necessary, that the donor and donee were not too closely related. Finally, the organization, by pairing up one donor with a donee and monitoring the donations, could ensure that no one donee received more than he or she needed for the exempt function. The government would have no more of a burden than it presently does. Once it had assured itself that the organization was bona fide, it could then leave all further monitoring efforts to the organization.

Proposal Two would also protect both government and donors from fraud, with no administrative burden on the government. It would have two advantages over Proposal One. First, it would allow the most direct contact between donor and donee. Donors would have the pleasure of handing over the check or cash directly to the certified object of their bounty.

Second, Proposal Two would be more flexible. Consider the following cases:

The contribution that gave me the most satisfaction was one to the wife of a truck driver who was killed the day before. I gave everything I had on me and I got the rest of the guys to pitch in. There was a case of personal need. It never could have been handled through an organization in time.⁹⁹

In April, 1954, Tom Barnhard, a Greenwich Village janitor, committed suicide in despair and left a sick widow. [Comedian Jackie] Gleason read the story, blew his nose, picked up the phone, and called the *News*. "Pal," he said, "I want to pick up the tab for that funeral." He did.¹⁰⁰

To apply Proposal One to either case, the donees would have to be investigated, and a sponsor would have to be found. Finding the

99. Statement of Sam Eckman, in F. EMERSON ANDREWS, *ATTITUDES TOWARD GIVING* 118 (1953).

100. JIM BISHOP, *THE GOLDEN HAM* 21-22 (1956).

right sponsor would take time. Multiple donors, each giving a small amount, would be quicker. Under Proposal Two, the charitable organization would merely conduct its investigation. Then, all contributions would be deductible. This form of giving harks back to the American pioneer traditions when neighbors worked together to help the one in need. This fine tradition should be encouraged.

Proposal Two, however, does have three possible disadvantages. First, monitoring the relationship of the donor and the donee may be impossible. Second, the proposal could lead to a resurgence of begging. Third, some donees might receive too much while others receive too little.

*1. Must Donor-Donee Relationships Be Monitored?—*Under Proposal Two, once an organization certifies a donee, it would have no control over who contributed to that donee. Therefore, donors and donees might have prior relationships. The nature of this problem depends upon the nature of the relationships.

*a. Parents and Children.—*It is very important that parents be prohibited from making deductible contributions to their minor children. First, a deduction for such contributions would be the most likely to be inefficient because these contributions would probably be made even if the deduction was not available. In fact, parents are legally obligated to support their minor children. Second, these contributions are already given tax recognition through the dependency exemption.¹⁰¹ No further deduction is needed.

However, even under Proposal Two, the charitable organization would have to certify that the individual donee was an appropriate charitable beneficiary. It would be highly unlikely for such an initial certification to be made were the donee's parents capable of making tax deductible contributions on the donee's behalf.¹⁰²

*b. Relatives and Friends.—*Proposal Two would furnish no protection against contributions from other relatives or friends.

101. I.R.C. §§ 151, 152.

102. However, if the charitable activity were something other than support for financially needy individuals, there would be a problem. For example, assume that a charitable organization gives scholarships to talented musicians, regardless of financial need. Such an organization could certify a financially independent musician as a deserving donee. Then, that donee's parents could transfer funds to her and take a charitable contribution deduction. Perhaps donees certified for reasons other than financial need would have to promise to use the funds only for the charitable purpose. Alternatively, there could be a cap placed on the amount of any one deductible contribution, and an overall cap as well. Each year, total donations could be computed. If the overall cap had been exceeded, then the donee would lose her certification for the future.

Should this be a cause for concern? It seems likely that relatives and friends, as a group, do not make such contributions now, but would be the most likely to do so if given more encouragement. Therefore, allowing for the deductibility of such contributions would not be inefficient. In fact, it would be highly effective.

c. Unrelated Donors.—Imagine the two scenarios under Proposal Two. First, two certified donees approach a potential donor and solicit a contribution. The donor states that she is willing to give money to one of them and invites each one to offer arguments why he, and not the other, should receive the contribution. The first donee describes his or her need in detail. The second donee offers to mow the donor's lawn. Donor gives the contribution to the second donee, who mows donor's lawn and gives the donor a charitable contribution receipt.

Second, imagine that two individuals approach a homeowner and offer to mow her lawn. The first merely offers to do a good job. The second states that he or she is a certified charitable donee and offers to give the homeowner a receipt so that homeowner can deduct the cost of the lawnmowing as a charitable contribution. The homeowner chooses the second individual and takes the deduction.

Payments for lawnmowing services are not charitable contributions, even when the recipient of the payment is in need. If the facts of the two scenarios were to emerge as above, there would be no deduction. However, under Proposal Two, it would be difficult to catch people engaged in schemes like these.

2. *Begging.*—Proposal Two would make contributions to beggars tax deductible. Of course, all individuals would have to be certified, so that the possibilities for fraud or wasted contributions would be minimized. However, some would have aesthetic concerns. Of course, such contributors would still have the option of contributing to charitable organizations.

3. *Too Many Contributions.*—Under Proposal Two, it would be possible for some donees to receive more contributions than they needed, while other needy donees received little or nothing. The charitable organization could attempt to alleviate this problem by conducting follow-up investigations of its donees and decertifying those who were no longer in need. However, such investigations would be difficult and burdensome. Of course, this problem is a structural problem of the charitable marketplace. Even under cur-

rent law, some charitable organizations might receive more contributions than they really need, and others may receive less.

D. A Choice

Proposal Two is tempting in that it offers flexibility and direct donations. However, its disadvantages, especially the possibilities for the fraudulent disguise of payments for services rendered as contributions, outweigh its advantages. Thus, only Proposal One is recommended.

V. Conclusion

If we are to encourage certain behavior, we ought to encourage that form of the behavior which is most likely to be performed. If we truly want to encourage charitable giving, we should encourage charitable giving to individuals, even friends. An expanded deductibility of earmarked contributions from sponsorship organizations would increase charitable giving without any of the disadvantages that have given us pause in the past. Proposal One should be certified by Congress as fully deserving of deductible contributions.