## Issue 7 – Should "love offerings" or similar donations be taxable to the recipient when a charitable/exempt organization facilitates their collection?

**Excerpt from Staff Memo to Senator Grassley Relating to Commission**

# Appendix D: Other Tax-Exempt Organization Issues for Consideration

### 3) Income Exclusion for Gifts Received through Charitable Organizations

**Present Law**

Under section 102(a), gross income does not include the value of property acquired by gift, bequest, devise, or inheritance. Section 102(c) provides an exception for "employee gifts": there is no exclusion from gross income for any amount transferred by or for an employer to, or for the benefit of, an employee.

**Discussion**

Some of the ministers related of the churches we reviewed are reported to have received "love offerings." The 2006 audited financial statements of Without Walls International Church state that Randy and Paula White "receive gifts and love offerings that are passed through the church." And a church spokesperson for Eddie Long's New Birth Missionary Baptist Church said that Long does not receive a salary from the church, but does take a "love offering." [1]

Larry L. McSwain, a professor at Mercer University's McAfee School of Theology, warns that "one of the practices of many churches, especially non-denominational and African-American ones, is to provide a love offering from the members to their pastor in place of salary. This technique is, for some, a way of avoiding the reporting of income." [2]

In 2007, Gregory L. Clarke, the pastor of a church, was convicted of tax fraud for underreporting and fraudulently misstating his taxable income on his 2000, 2001, and 2002 returns.[3] At trial, the defense argued that "Clarke received gifts, not salaries.

[1] Becky Ogburn, Who's Who?, News & Observer (Raleigh, NC), Jan. 20, 2008, at E2.
[2] Larry L. McSwain, Megachurch Probe Challenges All Church Ministries, http://ethicsdaily.com/news.php?viewStory=12010.
[3] *See* United States v. Clarke, 562 F. 3d 1158, 1164 (11th Cir. 2009).

Church deacons and trustees … testified the $60,000 given to Clarke was a 'love offering.'"[4] One news story reported that pastors of several local churches "testified that their churches gave Clarke money for preaching at revivals or fulfilling speaking engagements. However they said the money represented gifts, not pay." One pastor "testified his church gave Clarke two checks for $1,500 as a gift for preaching his annual appreciation day." Another pastor "identified for jurors a $125 check his church paid Clarke for participating in an annual leadership conference. [The pastor] insisted that the money was a gift to help defray costs."[5]

There is considerable confusion and misinformation about whether a "love offering" or similar payments to a minister should be treated as taxable income or as an excludable gift. Some commentators think the answer depends on whether the payor is able to deduct the payment as a charitable contribution. For example the Kansas Nebraska Convention of Southern Baptists, which defines a love offering as "an offering that is given from the heart to someone that has ministered to that very heart, and is not given simply because it is a tax-deductible charitable contribution," advises that "if the 'love offering' is received and designated for an individual for any occasion and the donor is not given a tax-deductible charitable contribution receipt, then the gift to the minister (recipient) is not considered taxable income." But "if the donors are given a tax-deductible charitable contribution receipt, the gift must then be considered income to the recipient."[6]

Whether a transfer is a gift for federal income tax purposes is a question of fact.[7] Although no definition of gift appears in the Code or the regulations, the Supreme Court stated that one of the essential elements of a gift is the existence of "detached and disinterested generosity."[8] The transferor's intention is a significant factor in determining whether a transfer is a gift. It is more likely that the intent to make a gift can be proven when the transferor has not received, and does not expect to receive, anything in exchange for the transfer. For example, the Tax Court has held that payments to a taxpayer by two shareholders of the corporation for which the taxpayer had rendered services were excluded from the taxpayer's gross income as gifts because the taxpayer had been fully compensated and the shareholders, expecting nothing more in return, were merely being generous.[9] The likelihood that a transfer will be considered a gift is greater if the transferor is not under an obligation to make the transfer. But the absence of a legal obligation to make a transfer does not make a transfer a gift if it is made to protect the transferor's public image or to retain the goodwill of the recipient.[10]

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[4] Val Walton, Clarke Guilty on All Counts; Baptist Minister Was Tried For Filing False IRS Returns, Birmingham News (Alabama), July 21, 2007, at 1A.

[5] Val Walton, Church Leaders Testify Pastor Got Gifts, Not Pay, Birmingham News (Alabama), July 18, 2007, at 1B.

[6] http://www.kncsb.org/legal/Love_Offerings.pdf.

[7] Comm'r v. Duberstein, 363 U.S. 278, 288 (1960).

[8] *Id.* at 285.

[9] Runyan v. Comm'r, T.C. Memo 1984-623.

[10] Biglow v. Comm'r, T.C. Memo 1985-284.

On several occasions courts have found that payments by a congregation to its minister are not in the nature of a gift made out of detached and disinterested generosity but, instead, have the character of compensation for services. In reaching their conclusion, the courts emphasized that the payments were made in the context of a professional or service relationship between a minister and a group being ministered to (a church community or congregation), and not in the context of a family relationship or a personal friendship between individuals which is the usual setting for acts of detached and disinterested generosity. For example, in Banks v. Comm'r, church members transferred cash to their minister on four "special" days during the year "because she was their minister, she had done an outstanding job in the past, she was there to help them with their problems when they needed her, and they wanted to keep her as their minister in the future." The minister also drew a salary from the church. Holding that the cash transfers were taxable payments for services and not nontaxable gifts, the court said that "the transfers arose out of petitioner's relationship with her congregation as its minister…. The evidence indicates that the primary reason for the transfers … was not detached and disinterested generosity, but rather, the church members' desire to reward petitioner for her services as a pastor and their desire that she remain in that capacity…. There was strong, objective evidence that the amounts transferred … were part of a highly structured program for transferring money to petitioner on a regular basis…. The regularity of the payments from member to member and year to year indicated that they were the result of a highly organized program to transfer cash from church members to petitioner. The existence of such a program suggests that the transfers did not emanate from a detached and disinterested generosity, but instead, were designed to compensate petitioner for her service as a minister."[11]

In Goodwin v. United States, the court held that substantial payments given to a pastor and his wife on "special occasions" were taxable income, not excludable gifts. According to the court, "the critical fact … is that the special occasion gifts were made by the congregation as a whole, rather than by individual Church members. The cash payments were gathered by congregation leaders in a routinized, highly structured program. Individual Church members contributed anonymously, and the regularly-scheduled payments were made to the Rev. Goodwin on behalf of the entire congregation…. The special occasion gifts were substantial compared to Goodwin's annual salary. The congregation, collectively, knew that, without these substantial, on-going cash payments, the Church likely could not retain the services of a popular and successful minister at the relatively low salary it was paying."[12]

[11] Banks v. Comm'r, T.C. Memo 1991-641; Tax Ct. Memo LEXIS 700, 12-13.

[12] Goodwin v. United States, 67 F.3d 149, 152 (8th Cir. 1995).

And in Swaringer v. Comm'r, T.C. Summ. Op. 2001-37, the Tax Court held that transfers to a pastor out of "offerings" of the congregation were taxable income, not gifts. The pastor was not paid a regular salary by the church, but earned a living though employment as a secretary. The court said that the evidence strongly suggested that the transfers were not gifts because they "arose out of the [pastor's] relationship with the members of the congregation presumably because they believed he was a good minister and wanted to reward him."

Since one's impulse to contribute, as a member of a congregation, to a love offering or other solicitation of money for the benefit of a minister will always be motivated, in part, by feelings of appreciation, gratitude, or indebtedness for the minister's ministry to that congregation (i.e., provision of services) and not simply by feelings of "detached or disinterested generosity" between individuals, amounts collected by or through the agency of church for the benefit of their minister should not be considered gifts excludable from gross income under section 102. Although section 102(c) denies gift treatment to amounts transferred by an employer to an employee, it is not always the case that the minister is an employee of the congregation from which the love offering or other payment is transferred. A minister is considered a self-employed individual for social security act purposes and may also be considered self-employed for income tax or retirement plan purposes unless employed by a congregation for a salary.[13]

**Issue for Consideration**

Should "love offerings" or other similar donations be excluded from the gross income of the recipient when a charitable organization has facilitated those collections?

Should the analysis be different if the recipient is a "disqualified person"?

[13] Internal Revenue Service, Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers 3 (2008).