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# Directed Gifts, Love Offerings and the Uncertain Guidance of IRS Publication 526 for Donors and Donees to Non-Profit Organizations: Literature Review

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***Directed Gifts, Love Offerings and the Uncertain Guidance of IRS  
Publication 526 for Donors and Donees to Non-Profit Organizations***

An Honors Thesis Submitted in partial fulfillment of the requirements for Honors  
in  
*Parker College of Business*

By  
*Victoria Liggett*

Under the mentorship of *Michael Wiggins*

ABSTRACT

Love offerings are donations given to an identified beneficiary of a non-profit organization. It can be challenging for tax experts to make accurate tax assessments based on such offerings and enormously difficult for the layperson. This is exacerbated by the unclear directives of the IRS, which include the sometimes nearly inscrutable guidelines of IRS Publication 526. The lack of clarity makes this a hazard for accountants and attorneys involved in tax preparation. Against this backdrop, this paper provides a literature review exploring the history of the issues, current guidelines as decided by court cases, and research done with regards to this topic.

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## **Overview of IRS Publication 526**

IRS publication 526 (IRS, 2017) is a guideline for assessing charitable contributions for tax returns. The publication reviews the types of organizations you can make deductible charitable contributions to, the types of contributions you can deduct, how much you can deduct, and how to report your charitable contributions.

The IRS defines a charitable contribution as “a donation or gift to, or for the use of, a qualified organization (IRS, 2017, p. 2).”

Contributions should be voluntary and made without getting anything of value in return. In addition, contributions should only be made to qualified organizations which include nonprofit groups that are religious, charitable, educational, scientific, or literary in purpose, or that work to prevent cruelty to children or animals (IRS, 2017).

### **Contributions You Can Deduct**

You can deduct contributions of money or property, as long as the contribution is made to a qualified organization, and not set aside for use of a specific person. There are also limits on the amount you can deduct (in most cases 50 percent of adjusted gross income), and there are additional limits if you receive a benefit, such as entrance into an event. In these cases, your contribution can only be recorded for the amount greater than the benefit you receive (IRS, 2017, p. 3).

### **Out-of-Pocket Expenses in Giving Services**

You cannot deduct the value of your services given to a qualified organization, however you can deduct some amounts you pay in order to give those services. These expenses must be unreimbursed, directly connected with the service, and must be not be personal, living, or family expenses (IRS, 2017, p. 4).

### **Contributions You Can't Deduct**

There are several types of contributions that do not qualify as charitable contributions. One disqualifier is any contribution made to a specific individual. Even if you give to a qualified organization, if you expect the contribution to go directly to a specific person, you cannot deduct it (IRS, 2017, p. 6)

### **Summary**

The remainder of IRS publication 526 goes over other types of contributions such as physical property, limits on deductions, and records you are required to keep. While the publication goes into sufficient detail on some types of contributions, others are not so clear. For example, love offerings could be considered as a gift, but if it is done through a qualifying organization would it be deductible as a charitable contribution? The IRS publication 526 says no it would not, since it was for the benefit of a specific person. But what if the contribution was given to the organization, who then distributed it to a specific person? For the donee, lines become even more unclear. If a donee receives several contributions that could be considered as "gifts" would those be non-taxable or should they be treated as income? There have been several cases

where people, particularly in the religious sect, have used the ambiguity of IRS publication 526 to commit fraud and tax evasion.

### **Love Offerings and Directed Gifts**

Typically, when we think of “love offerings” we think about small gifts, usually monetary, given to someone in support or appreciation. However, love offerings and directed gifts do not always have to be to a specific person. They can be for an organization or a cause too. These types of offerings are most frequently found religious non-profits and can be either sporadic or consistent. In many cases, the offerings collected provide significant amount of income to the receivers of the offerings. This is where the problems come in. There can be confusion on how to report such gifts for tax purposes, both for the donor and the donee. Any misreporting or misrepresentation that is found by the IRS can lead to serious fines, embarrassment for the organization or individual, and even jail time. In some cases, donors and donees can purposefully use the uncertainty of the IRS’s guidelines to fraudulently report their income (for donees) or charitable contributions (for donors).

### **History of Religious and Non-Profit Tax Fraud**

Unfortunately, religious and other non-profit institutions are particularly susceptible to fraud. Due to the nature of the organization, they are particularly vulnerable to affinity fraud, and more likely to trust those who they believe to be working for their cause. Those who give to religious or non-profit organizations are also at risk, because not all non-profit organizations are actually qualified

organizations, or even real organizations in some cases. Fraud against organizations and individuals is not a newly developing problem. However, with the introduction of the internet and the increased reachability between people across the globe, coupled with the mask of anonymity, fraud has been steadily increasing. And that's just the frauds that are big enough for us to notice. Even so, fraud in non-profit organizations, particularly related to love offering tax fraud, has been present for a long time.

In the 1900s, Jim Bakker organized one of the biggest fraud schemes of the time, using his ministry platform PTL Ministries. In a period of three short years, the Bakkers had collected \$158 million dollars from fraudulently selling "partnerships" to followers (Applebome, 1989). Jim Bakker was sentenced to 45 years in federal prison and still owes the IRS approximately \$5.5 million in back taxes, mostly due to the revoked tax-exempt status of PTL Ministries (Funk, 2018). Unfortunately, Bakker wasn't the only high profile, public figure to be tried for religious and non-profit fraud and/or tax evasion. Several other scandals include:

- L. Ron Hubbard, the deceased leader of Scientology, a number of whose prominent leaders were sentenced in 1979 for various conspiracies, including bugging IRS offices and stealing IRS documents (United States of America v. Mary Sue Hubbard, 1979).
- The Reverend Sun Myung Moon, who was imprisoned for nearly two decades for tax fraud (United States of America v. Moon, 1983).

- Robert Tilton, the televangelist, whose ministry declined after ABC's *PrimeTime Live* exposed the misappropriation of funds donated to his Success-N-Life infomercials (Rowe, 1998).
- The Reverend Al Sharpton, whose 2004 presidential campaign relied heavily on love offerings from campaign appearances at churches, and who was recently cited for receiving improper donations and determined by the IRS to owe \$486,803 in back taxes (Pappas, 2008).
- K.P. Yohannan, the President of Gospel for Asia, the second-largest religious charity in the United States, who in an ongoing scandal has been accused of the misappropriation of hundreds of millions of donated funds, including redirecting funds given for missionary efforts to amass an empire consisting of private corporations, homes and a professional sports team (Dixon v. Gospel for Asia, 2016).
- Mark Driscoll, the erstwhile senior pastor of Mars Hill Church and head of the nationwide denomination Acts 29, resigned amid charges of plagiarism, using donated funds to manipulate the NYT Bestseller List (Tu, 2016).

These are just a few out of the many different cases that have impacted religious non-profit organizations. A pastor in Florida pled guilty to an \$11 million dollar tax fraud scheme where he and his daughter fraudulently prepared tax returns, receiving a commission of 10 percent on whatever their "clients" received (Bowen, 2019); two pastors in California operated a \$25 million Ponzi scheme, promising 12 percent annual returns that were tax-deductible (Longo, 2019); and



pastor in Virginia perpetuated a \$1.7 million fraud and was found guilty of wire fraud, money laundering, false-tax return filing, and obstruction, and ordered to pay \$270,000 in back taxes to the IRS (Weiner, 2019).

So with all the different types of cases being brought to court, how does the judicial system handle the prosecution of these fraudsters? Most of the types of frauds that actually make it to court are settled between the private parties. However some, particularly when it's the United States Government as the plaintiff, are much more complex and can take months or even years to sort through. The great many of the cases between convicted fraudsters and the United States Government relate to whether or not love offerings or other "gifts" are considered taxable to the donee. After all, IRS guidelines can be cryptic with their definitions of gifts v. taxable charitable contributions, for religious organizations in particular. Still, the decisions that have made it through court have set precedent for future cases on what is considered a gift for the purpose of the tax code, and what does not.

### **Notable Court Cases**

In the case of *Bogardus v. C.I.R.*, Universal Oil Products was bought out by United Gasoline Corporation. The former stockholders of Universal became stockholders of Unopco Corporation, which was formed for the purpose of acquiring some of Universal's assets. The former stockholders of Universal (now Unopco) wished to give bonuses to former and present employees Universal in the amount of \$607,500, in recognition of the valuable and loyal services (1937). The case declares that

Neither the Universal Company nor the United "was under any legal or other obligation to pay said employees...any additional...compensation" other than that which they were paid by the Universal Company and that neither Unopco nor any of its stockholders, nor any of the stockholders of Universal, was at any time under any legal or other obligation to pay any of said employees, attorneys, or experts, including petitioner, any salary, compensation, or consideration of any kind. (p. 37).

They also said that the payments were not made as compensation for services rendered, and that none of the three corporations would be making any claims or deductions for federal income tax purposes relating to the payments.

The Board of Tax Appeals concluded that based on the information, "the payments made by Unopco to the petitioners and others were additional compensation in consideration of services rendered to Universal, and were not tax free gifts." (p. 38). This decision was based in part on the fact that Unopco received previous benefits from the employees at Universal, and that the stockholders labeled their gift as a "bonus" in recognition of the employees' services (p. 43). The U.S. Supreme Court however found that the employees of Universal had indeed received a gift, saying "A gift is none the less a gift because inspired by gratitude for the past faithful service of the recipient." (p. 44). They pointed out that the recipients of the gift were not current employees of Unopco or any of its stockholders, and that past services were not relevant in this situation. The court also ruled that the intent behind the gift was based solely on

the desire to do a “nice and generous thing” to show appreciation of the recipient’s past loyalty (p. 37).

In the case of *C.I.R. v. Duberstein*, the president of Duberstein Iron & Metal Company regularly did business with Mohawk Metal Corporation. The president of Mohawk would call the president of Duberstein, and occasionally get names of potential customers from Duberstein (p. 280). Mohawk wanted to give Duberstein a present, because of the information that Duberstein had given them. Mohawk gave Duberstein a Cadillac, even though Duberstein insisted nothing was due, and deducted the value as a business expense on its corporate income tax return. Duberstein did not include the value of the Cadillac in gross income, thinking it was a gift. However, the courts determined that it was not a gift. Duberstein stated that “he did not think Berman would have sent him the Cadillac if he had not furnished him with information about the customers” (p. 281). So the Cadillac in this case would seem more like a payment of services. Furthermore, the courts stated that:

“the statute does not use the term “gift” in the common law sense, but in a more colloquial sense...For the Court has shown that the mere absence of a legal or moral obligation to make such a payment does not establish that it is a gift. And, importantly, if the payment proceeds primarily from “the constraining force of any moral or legal duty,” or from “the incentive of anticipated benefit” of an economic nature, it is not a gift. And, conversely, “[w]here the payment is in return for services rendered, it is irrelevant that the donor derives no economic benefit from it.”

The courts ruled that "gifts" should proceed from a "detached and disinterested generosity out of affection, respect, admiration, charity or like impulses." (285). Because this did not apply to the details in the case, the Supreme Court agreed with the tax court in ruling that the Cadillac should not be considered a gift.

Finally, in *Banks v. Commissioner*, Rose Banks underreported income, leaving a tax liability of \$58,911. Banks was a minister of a church in Colorado Springs. In addition to her salary, Banks also received love offerings on occasions such as her birthday, Mother's Day, the church's anniversary, and Christmas. These love offerings over \$40,000 per year and were not claimed as income by Banks, or as deductions by the donors. The court ruled that Banks did not have sufficient evidence to prove that the amounts received as love offerings were gifts under section 102(a) of the tax code. They determined that, based on evidence from members, that the gifts were for services rendered, therefore negating the essential element of a gift.

In summary, the cases determine the following additional guidelines for nontaxable "gifts":

1. It cannot be for a service performed
2. Must be spontaneous in nature
3. Cannot be solicited
4. Cannot be a tax deduction for the donor

### **Literature Review of Research in Religious Non-Profit Organizations**

While there is quite a bit of research on fraud in religious non-profit organizations, there is much less research on the issue of tax evasion and problems with love offerings within religious non-profit organizations. Studies have been done on the impact of demographics and attendance on charitable contributions (Hodge, 1994) and the effect of tax incentives on charitable contributions (Duquette, 2016). There is also a good amount of research done with fraud in non-profit organizations in general, and measures to combat it. However, with respect to research in love offerings and the challenges the IRS faces, there is a surprising gap. Perhaps because it is near impossible to determine the exact nature of most love offerings, and even more difficult to track them, especially with smaller churches or offerings given “off the books”. It could be too complicated to try and sort out in court, unless the tax evasion is substantial, the IRS may not want to bother with sorting through all the evidence. There is also the ever-present challenge of the first amendment, which limits what the government can go after religious non-profit organizations for. Regardless, income tax evasion is a problem that should be addressed within religious non-profit organizations.

In the *Journal for the Scientific Study of Religion*, Stack and Kposowa discuss the effect of tax fraud on the government. In the United States, the amount of tax revenue lost to tax cheating is approximately 20 percent (p.325); billions of dollars in lost revenue. The article also discusses the importance of religion in shaping cultural attitudes on tax fraud. The findings were, in summary, that tax fraud is closely linked to tax fraud acceptability; and that if the

government can increase public trust and confidence, there should be less tax fraud (p. 341). The *Internal Revenue Service Data Book, 2017* finds that 88 percent of people surveyed find it not at all acceptable to cheat on income taxes, 9 percent think a little is ok, and 3 percent think it is acceptable to cheat as much as possible. Whether or not this leads to actual tax fraud is undeterminable. However, the IRS has issued over 2,000 civil penalties related to fraud in individual income tax returns, for a total amount of over \$150,000,000 (p. 52). And that's just from the less than 1 percent of individual income tax returns examined by the IRS.

The issue of tax evasion in religious non-profit groups is recognized as far back as the 1900s. In an article in the *Campbell Law Review*, Scialabba et al. discusses the issue of tax evasion through the "mail-order ministry"; and the IRS's battle between the restrictions of the charitable contribution rules of section 170 of the Internal Revenue Code, and the religious purpose exemption of section 501(c)(3) of the Code (1988). The mail order ministry, which the IRS deemed as a "tax protester scheme", involved promoters selling certifications of "ordination" through the mail in exchange for a donation. Once ordained, the minister can establish an organization which can claim to be a church or other religious institution (p. 2). The minister can avoid taxes by one of two ways. First, they could deduct a contribution (not exceeding 50 percent of their AGI) and the church would provide a home and living expenses. Alternatively, they could take a "vow of poverty" and assign their assets and income to the church, who would then pay for their living expenses. In doing this, the "minister" can use his

“church” in order claim a tax-free return of a substantial portion of their outside business income (p.3). The article discusses the section 170 deduction method, problems the IRS and courts face as they attempted to challenge this scheme, and IRS and mail order ministry schemes. One of the main issues the article identifies is the first amendment, stating “Congress shall make no law respecting an establishment of religion, or prohibit the free exercise thereof...” (U.S. Const. amend. I.). This puts a restriction on the government and courts when challenging the validity of mail-order ministry schemes (p. 4). Other issues include whether or not the church is organized and operated for a religious purpose. Section 107 does not clearly define “religious purpose”, and the IRS Code and Treasury regulations do not clearly define the term “religion” either. Thus, the opportunity was opened for so-called “churches” to claim that their members follow a “sincere” belief in a religion to meet the requirements under sections 170 and 501(c)(3) that shield donors from tax payments (p.8).

Throughout the years more has been added to the IRS code, including the section on charitable contributions, which limits what can be considered a contribution for tax deductible purposes. The Tax Reform Act of 1986 also had an adverse effect on mail-order ministries, cutting the advantage of using the 170 deduction method from a maximum tax rate of 50 percent, to only 34 percent (p. 24). It also provided new tax penalties, increasing the understatement of liability penalties from 10 to 25 percent and the fraud penalty from 50 to 75 percent (p. 25). The penalty charges will have a strong effect on mail-order ministers, who would be less likely to accept the risk of being subject to more penalties.

While mail-order ministry frauds have certainly declined, even after the IRS's tax law changes, people still try to fight the system. A man in Illinois faced a tax bill of \$250,000 for tax evasion when he tried to use his property as a "church" to avoid paying property taxes (Gomstyn, 2010). The courts determined that "section 15-40(a) of the Property Tax Code does not exempt those who erect a chapel or sanctuary within a private home and then use the space from time to time for private contemplation and religious observances. 35 ILCS 200/15-40(a)." (Armenian v. Department of Revenue, 2011).

In the *Journal of Applied Business Research*, Morefield and Ramaswamy further discuss abuse by tax exempt religious organizations (2011). The biggest issue is the increasingly grey area of whether or not some religious organization's activities meet the criteria of tax-exempt organizations. This grey area provides opportunities for abuse by individuals who are pursuing their own personal gains. Technology has also created new opportunities for people to raise money at the expense of other people. As radio broadcasting emerged in the 1920's, televangelists appeared in the homes of Americans all over the country, collecting millions of dollars from the faithful in support of their ministries (p. 76). Many of the televangelists did not report all of their income received from their followers, such as in the cases discussed above. Because of this, the courts have had to walk the fine line of separation between church and state. In the case *Lemon v. Kurtzman* (403 US 602 (1971)), the court created the "lemon test" for deciding when the law violates the required separation between church and state. According to the courts the law is constitutional if it has a secular (non-



religious) purpose and is neutral toward religion (p. 76). This provides protection for churches and religious organizations, in that they cannot be taxed. Morefield and Ramaswamy go on to discuss the IRS's requirements organizations need to meet to qualify as a church, the tax benefits qualified "churches and religious organizations" receive, and recent frauds and abuses that the IRS has had to deal with. While the IRS and courts cannot directly challenge the legitimacy of the religion or beliefs, they can refuse a church tax exempt status based on legitimate criteria such as the founder having almost total control over the entity's assets and activities or having few or related members (p. 79). The IRS has also combated the increase in tax evasion by examining more tax returns, increasing their number of examinations by 106 percent since 2005, even though the number of examinations in 2009 were only 1.24 percent of the actual returns filed (p. 80). As Morefield and Ramaswamy state, "The IRS and state and local enforcement authorities seem to be intimidated into avoiding action against all but the most outrageous and abusive fraud and scams... Given obstacles faced by the Federal, state, and local enforcement authorities, self-policing and self-regulation by churches and religious organizations seem to be the most effective type of protection against unscrupulous individuals who would mislead the faithful and misappropriate their well-meant gifts." (p. 82).

In a more recent article in the *Journal of Public Economics*, Tazhitdinova discusses reducing evasion through self-reporting. There are some cases where third-party reporting for certain transactions is not possible, and this is where self-reporting comes in. Tax authorities require that individuals follow certain rules for

self-reporting, including providing details or receipts for transactions.

Tazhitdinova discusses whether or not having additional requirements, at the expense of the taxpayer, can reduce tax evasion by making it more inconvenient or costly to cheat. The results of the study concluded that basic self-reporting requirements are effective at reducing evasion for reported amounts above a certain threshold. Tazhitdinova found that by relaxing reporting requirements, the amount of donations increased; however, 50% of the new donations were untruthful. That being said, Tazhitdinova estimated that the tax revenue loss was offset by savings for taxpayers because reporting requirements imposed costs of approximately \$55 per person (p. 32). Because the requirements levy additional charges on the reporters, Tazhitdinova suggests self-reporting requirements should only be for those reporting above a pre-specified level. The article determined three key results that could be important for future policy. First, self-reporting requirements are effective against evasion; requiring individuals to fill out a form or even asking individuals for more information (without requiring proof) can be effective at reducing evasion. Second, the findings confirm that even minimal requirements come at a cost to the taxpayers that should not be ignored. And third, the trade-off between compliance and evasion implies that reporting requirements should not be imposed on *all* taxpayers (p. 32).

### **Scope of Fraud in Non-Profit Organizations**

As for data on fraud in non-profit organizations, there is not much. The annual *Report to the Nations* sent out by the ACFE estimates 60 cases of fraud in religious, charitable, or social services with a median loss of \$90,000 in 2018

(p. 24). However, the statistics on the actual number of fraud cases and the median dollar loss will be much higher. Many organizations, especially non profits will not report fraudulent activity, preferring to deal with it quietly. For churches in particular, publicly admitting to fraud could be a death sentence. In regard to love offerings, there is even less research, and certainly less guidance. The IRS had laid out the basics for charitable contributions, as well as gifts. But love offerings could be considered either one of those, and the IRS has provided little guidance what should be a gift for the donee, or charitable contribution for the donor. Until clearer guidance has been laid out, the amount of unreported income (and claimed charitable contribution deductions) will most likely continue to increase.

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