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The Honorable Johnny Isakson
United States Senator
One Overton Park
3625 Cumberland Boulevard, Suite 970
Atlanta, GA 30339

Attention:

Dear Senator Isakson:

I apologize for the delay in responding to your inquiry dated October 6, 2008, on behalf of your constituent, . She asked the following questions:

Can individual members of a church give an amount through the church to help pay a minister's bill for previous health expenses?

Can the individual members then take the amount as a deduction from income tax as a donation to the church?

If individuals give for this specific purpose to the church, will the minister then be subject to income tax on the amount of the personal gifts through the church?

The law allows a taxpayer to deduct a contribution or gift that is to or for the use of a qualified organization (section 170(a) of the Internal Revenue Code (the Code)). A religious organization, such as a church, is generally a qualified organization. However, for a contribution to be deductible, the church must have full control of the donated funds and discretion as to their use. This ensures that the organization will use the funds to carry out the organization's functions and purposes. Further, to deduct a contribution, the donor's intent in making the payment must have been to benefit the charitable organization and not an individual recipient.

A contribution that is earmarked for a specific individual is not deductible as a charitable contribution. For example, in *Thomason v. Commissioner*, 2 T.C. 441 (1943), the Tax Court held that contributions to a welfare agency were not deductible as charitable contributions because the payments were for the care of a specific child. In *Tripp v. Commissioner*, 337 F.2d 432 (7th Cir. 1964), a contribution to a scholarship fund that the donor designated for the benefit of a single individual was not deductible. We have followed this principle in various rulings. For example, in Revenue Ruling 79-81, 1979-1 C.B. 107, we ruled that payments to a religious organization, earmarked for specific students, were not deductible as charitable contributions. Therefore, an individual member's contribution to the church that is designated for the benefit of the minister is not deductible under section 170 as a charitable contribution.

also asked if the minister must pay income tax on the amounts that he receives from the members of the church to pay his credit card bills. Because inquiry is very factual, we cannot provide her with a definitive answer. I hope, however, the following information is helpful.

Gross income generally means all income from whatever source derived (section 61(a) of the Code). Gross income encompasses all accessions to wealth, clearly realized, over which taxpayers have complete dominion, and is subject to tax unless specifically exempted (*Commissioner v. Glenshaw Glass Co.*, 348 U.S. 426 (1955)).

The value of property acquired by gift, however, is excluded from gross income if it:

- Comes from a detached and disinterested generosity
- Is made out of affection, respect, admiration, charity or like impulses
- Is not made from any moral or legal duty, nor from the incentive of anticipated benefit of an economic nature
- Is not in return for services rendered (*Commissioner v. Duberstein*, 363 U.S. 278, 285-286 (1960)).

Determining if a transfer comes "from a detached and disinterested generosity" requires an inquiry into the transferor's intention of making the payment (*Id.*). For example, a minister who solicited funds on a radio program had to report the contributions as income because the contributions were not gifts but given to continue hearing the minister's message on the radio program (*Webber v. Commissioner*, 219 F.2d 834 (1955)). Moreover, a minister was required to include in income substantial cash gifts he received on three "special occasions" each year that congregation leaders collected from individual church members who contributed anonymously (*Goodwin v. United States*, 67 F.3d 149 (8th Cir. 1995)).

In addition, if the payments to the minister are made by or for the church itself (rather than by the individual members) and the minister is an employee of the church, then the payments are income and cannot be gifts for federal income tax purposes (section 102(c) of the Code). Further, the tax treatment of the payments may depend on whether the minister deducted his medical expenses on previous income tax returns and whether the contributions are treated as a recovery or reimbursement of those expenses (see sections 111 and 213 of the Code). Therefore, determining if a transfer is excludable from gross income as a gift is a highly factual issue that must be decided on a case-by-case basis.

I hope this information is helpful. I am enclosing Publication 526, *Charitable Contributions*, which more fully explains the rules for charitable giving. If you have any questions about the charitable giving portion of this letter, please contact

Sincerely,

Thomas D. Moffitt
Chief, Branch 2
Office of Associate Chief Counsel
(Income Tax & Accounting)

Enclosure