



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

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The Honorable Rob Portman  
United States Senator  
37 West Broad Street  
Suite 300  
Columbus, OH 43215

Attn:

Dear Senator Portman:

I am responding to your inquiry dated December 6, 2011, submitted on behalf of your constituent, \_\_\_\_\_, a minister and Bible scholar. He asks whether the unsolicited donations that he receives are includable in gross income or excludable from gross income as a gift.

\_\_\_\_\_ indicates in his correspondence that the IRS is examining his federal income tax returns. Because \_\_\_\_\_ is under examination, we cannot comment on the specific issues that are the subject of that examination. However, we may provide you with general information regarding the terms "income" and "gifts" as used in the Internal Revenue Code (Code).

Section 61(a) of the Code provides that "gross income" means "all income from whatever source derived." The Supreme Court has consistently held that in enacting section 61, Congress intended to exert the full measure of its taxing power. Thus, any accession to wealth is presumed to be gross income unless the taxpayer can demonstrate that it fits within an exclusion provided by another section of the Code. The Court has also ruled that section 61 should be construed broadly and that exclusions from gross income should be construed narrowly.

One of these exclusions, section 102, provides that property received by "gift" is not includable in gross income. Section 102 does not define the term "gift." The Supreme Court has held that a gift is a transfer made out of detached, disinterested generosity.

*Duberstein v. Commissioner*, 363 U.S. 278 (1960). Whether an accession to wealth constitutes a gift under section 102 is determined by all the facts and circumstances surrounding the transfer.

I hope this information is helpful. If you have any questions, please contact me or  
, Identification Number , at ( ) .

Sincerely,

Andrew J. Keyso  
Deputy Associate Chief Counsel  
(Income Tax and Accounting)