Washington and Lee Law Review

Volume 45 | Issue 4 Article 17

Fall 9-1-1988

"L. Ron Hubbard, How Much Is a Religious Service Worth, and Do Box Seats Cost Extra?": The Deductibility of Mandatory Donations Under Section 170 of the Internal Revenue Code

"L. RON HUBBARD, HOW MUCH IS A RELIGIOUS SERVICE WORTH, AND DO BOX SEATS COST EXTRA?": THE DEDUCTIBILITY OF MANDATORY DONATIONS UNDER SECTION 170 OF THE INTERNAL REVENUE CODE

Congress enacted section 170 of the Internal Revenue Code (the Code) to permit individuals and corporations, in computing their income tax liability, to deduct from gross income contributions that the individuals made to religious, charitable, scientific, or educational nonprofit organizations (the charitable contribution deduction).[1] In enacting the charitable contribution deduction, Congress recognized that permitting individuals to deduct charitable contributions would support Congress' policy goals.[2] For

---

1. *See* I.R.C. § 170(a)(1) (1987) (stating that individuals may deduct charitable contributions); I.R.C. § 170(c)(2)(B) (1987) (providing that charitable contributions are gifts to or for use of charitable organizations). In 1917 Congress first permitted individuals to deduct contributions that the individuals made to charitable organizations. Revenue Act of 1917, ch. 63, § 1201(2), 40 Stat. 300. Congress originally enacted § 170 of the Internal Revenue Code (Code) as § 214(a)(10) of the Revenue Act of 1924. Revenue Act of 1924, ch. 234, § 214(a)(10), 43 Stat. 253 (Congress' original provision for charitable contribution deduction); *see* 436 Tax Mgmt. (BNA) Income Tax Series 127 (1986) (discussing statutory history of charitable contributions). Since 1924 Congress has changed only the percentages of taxable income that limit the amount which a taxpayer may deduct as charitable contributions. *See* I.R.C. § 170(b) (stating various percentages that Congress currently permits taxpayers to deduct for charitable contributions); H.R. REP. No. 8300, 83rd Cong., 2d Sess. 25 (1954) (permitting taxpayers to deduct up to 30% of taxpayers' adjusted gross income for charitable contribution); Revenue Act of July 8, 1952, ch. 588, 66 Stat. 442, § 4(a) (allowing taxpayers to deduct up to 20% of taxpayers' adjusted gross income for charitable contributions); Revenue Act of 1917, *supra*, § 1201(2) (permitting taxpayers to deduct up to 15% of taxpayers' adjusted gross income for charitable contributions); Tax Mgmt., *supra*, at 127 (describing statutory changes in § 170 since its original enactment). In 1917, Congress allowed taxpayers to deduct a maximum of an amount equal to 15 % of taxable income from gross income as charitable contributions. *See* Revenue Act of 1917, *supra*, at § 1201(2) (permitting taxpayers to deduct up to 15% of taxpayers' adjusted gross income for charitable contributions). In 1952, Congress increased the percentage allowable for charitable contributions from 15% to 20%. Revenue Act of July 8, 1952, ch. 588, 66 Stat. 442, § 4(a) (allowing taxpayers to deduct up to 20% of taxpayers' adjusted gross income for charitable contributions). In 1954, Congress increased the amount of the charitable contribution deduction to 30% of taxpayers' adjusted gross income. H.R. REP. No. 8300, 83rd Cong., 2d Sess. 25 (1954) (permitting taxpayers to deduct up to 30% of taxpayers adjusted gross income for charitable contributions). Today, Congress allows taxpayers to deduct up to 50% of adjusted gross income for charitable contributions. I.R.C. § 170(b) (1987) (stating various percentages that Congress permits taxpayers to deduct for charitable contributions).

2. *See* H.R. REP. No. 1860, 75th Cong., 3d Sess. 19 (1938) (stating Congress' goals in enacting charitable contribution deduction); 55 CONG. REC. 6728 (1917) (noting that imposition of heavy tax burdens on taxpayers during World War II would force taxpayers to economize and decrease charitable contributions); B. BITTKER, FUNDAMENTALS OF FEDERAL INCOME TAXATION § 19-1 (1983) (discussing Congress' purpose in enacting charitable contribution deduction);

example, Congress thought that the charitable contribution deduction would stimulate individuals to contribute funds to charitable organizations.[3] Accordingly, Congress hoped that individuals' charitable contributions would minimize the need for the government directly to allocate funds to charities.[4] In addition to lessening the government's budgetary pressures, Congress also hoped that individuals' charitable contributions would enhance charities' economic ability to provide educational, cultural, and religious activities for the public.[5] Congress noted that allowing an individual to take deductions for charitable contributions would decrease an individual's taxable income and thus decrease the government's revenue resulting from income taxation.[6] Congress recognized, however, that the benefits of the charitable contribution deduction compensated the government for the loss of potential revenue resulting from the decreases in taxable income.[7]

Although Congress believed that the charitable contribution deduction would increase the frequency of charitable contributions and thus enhance a charity's ability to provide educational and cultural activities for the public, Congress noted that the opportunity for an individual to reduce his income tax liability might prompt the individual to abuse the deduction privilege by characterizing all contributions as charitable.[8] Accordingly, Congress provided that a contribution must meet certain requirements before

---

436 Tax Mgmt., *supra* note 1, 127 (discussing legislative history of § 170 and Congress' purposes for enacting § 170). In 1917 Congress began to allow taxpayers to deduct charitable contributions from gross income because Congress was concerned that the effects of World War I would reduce an individual's propensity to contribute to charities. *See* 55 CONG. REC. 6728 (1917) (expressing Congress' hope that allowing taxpayers to take deductions for charitable contributions would increase taxpayers' giving of charitable contributions); R. KAHN, PERSONAL DEDUCTIONS IN THE FEDERAL INCOME TAX 7 (1960) (discussing Congress' fear that high tax rates prevailing during World War I would reduce amount and frequency of taxpayers' charitable contributions); 436 Tax Mgmt., *supra* note 1, at 127 (discussing Congress' recognition of need for charitable deduction to stimulate charitable contributions).

3. *See* H.R. REP. No. 1860, 75th Cong., 3d Sess. 19 (1938) (stating that Congress enacted charitable contribution deduction to encourage taxpayers to make charitable contributions). By enacting the charitable contribution deduction under § 170 of the Code, Congress wished to increase private sector support of charities and thus relieve the government of the burden of supporting charities. *Id.*

4. *Id.* (discussing Congress' purposes in enacting § 170 of Code).

5. *See id.* (stating that Congress enacted charitable contribution deduction to assist charities in providing public benefits).

6. *See id.* (discussing decrease in taxable income resulting from charitable contribution deduction). Congress stated that the charitable contribution deduction would lead to a loss in the government's revenue from taxation. *Id.*

7. *Id.* (discussing Congress' belief that benefits of charitable contribution deduction would compensate government for loss of revenue).

8. *See id.* (discussing need for donations to meet certain requirements to constitute charitable contributions). To close tax loopholes, Congress enacted requirements that payments must meet before the payments constitute deductible charitable contributions. *Id.* Congress noted that requirements were necessary to ensure that contributions which taxpayers deducted from taxable income benefited the government and the charities that received the contribution. *Id.* at 19.

an individual can deduct the contribution.[9] To take a deduction for a charitable contribution under section 170 of the Code, an individual must contribute to one of the different types of charitable organizations described in section 170.[10] Additionally, to qualify as a deduction, an individual's transfer of funds to the charitable recipient must constitute a "contribution or gift."[11] Courts have determined that the term "gift" is synonymous with the term "contribution."[12] Under section 170(c) of the Code, a charitable contribution is a contribution to or for the use of a charitable organization.[13] Because Congress has not defined the term "contribution" in section 170 or explained the meaning of "contribution" in the legislative history of

---

9. *See* I.R.C. § 170 (1987) (providing that payments must satisfy certain requirements to constitute charitable contributions); *see also* B. Bittker, *supra* note 2, §19-2 (discussing limitations that Congress imposed on charitable contribution deduction); Colliton, *The Meaning of "Contribution or Gift" for Charitable Contribution Deduction Purposes*, 41 OHIO ST. L.J. 973, 973 (1980) (discussing requirements for charitable contribution deduction under § 170 of Code); Hobbet, *Charitable Contributions- How Charitable Must They Be?*, 11 SETON HALL L. REV. 1, 1 (1980) (discussing statutory requirements for charitable contribution deduction).

10. *See* I.R.C. § 170(c)(2) (1987) (describing organizations to which taxpayer must contribute for payment to constitute charitable contribution). A taxpayer's payment will constitute a contribution under section 170 if, for example, the taxpayer contributed to a charitable organization such as a corporation, trust, community chest, fund, or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. *Id.*

11. *See id.* § 170(c) (taxpayer's payment must constitute contribution or gift to qualify for deduction under § 170).

12. *See* DeJong v. Commissioner, 309 F.2d 373, 376 (9th Cir. 1962) (stating that "contribution" is synonymous with "gift" under § 170 of Code); Channing v. United States, 4 F. Supp. 33, 34 (D. Mass.) (discussing similar meanings of "contribution" and "gift"), *aff'd per curiam*, 67 F.2d 986 (1st Cir. 1933), *cert. denied*, 291 U.S. 686 (1934); Oakknoll v. Commissioner, 37 T.C.M. (CCH) 1380, 1381 (1978) (noting that "contribution" and "gift" are synonymous under § 170), *aff'd*, 79-1 U.S. Tax. Cas. (CCH) 9328 (2d Cir. 1979); Rainer Co. v. Commissioner, 61 T.C. 68, 77 (1973) (noting that "contribution" and "gift" have similar meanings under § 170 of Code); Rev. Rul. 72-506, 1972-2 C.B. 106, 106 (stating that "contribution" is interchangeable with "gift" under § 170); Rev. Rul. 71-112, 1971-1 C.B. 93, 93 (discussing similar meanings of "contribution" and "gift"); Hobbet, *supra* note 9, at 1 (noting that courts have interpreted "contribution" and "gift" as having same meaning under § 170 of Code).

13. *See* I.R.C. § 170(c) (1987) (defining charitable contribution). Under the Code, a contribution is a payment to a charitable organization. *Id.* However, not all payments that taxpayers make to charitable organizations are deductible charitable contributions. *See, e.g.*, Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (holding that parishioner's payments to Church of Scientology were not deductible charitable contributions); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (holding that parishioners' may not take deductions for their mandatory payments to church); Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (stating that church member may not deduct from gross income mandatory payments that member made to church). Although Congress has defined "contribution", Congress has not defined "charitable contribution" or provided guidance for assessing whether a payment constitutes a charitable contribution. *See* I.R.C. § 170(c) (1987) (demonstrating that Congress failed to provide useful definition of "contribution"). Thus, Congress' definition of contribution is circular, ambiguous, and unhelpful for courts in determining whether a taxpayer's payment constitutes a charitable contribution under section 170. *See id.*

section 170, and the Internal Revenue Service (the Service) has not defined "contribution" in the Income Tax Regulations, courts have attempted to determine the meaning of "contribution" under section 170.[14] Courts have applied a variety of tests for determining whether voluntary payments to charities constitute contributions under section 170.[15] Generally, courts have considered only whether voluntary payments are contributions under section 170.[16] Recently, however, federal circuit courts have examined and disagreed about the deductibility of mandatory payments that otherwise meet all of the section 170 charitable contribution requirements.[17]

Four federal circuit courts have considered whether church members may deduct payments that the members made to a church if the church deems the payments mandatory (mandatory charitable contribution).[18] In each of the cases that the circuit courts have decided, church members claimed deductions for mandatory charitable contributions to the Church

---

14. *See* I.R.C. § 170 (1987) (containing no definition of "contribution"); *see also* Miller v. Commissioner, 829 F.2d 500, 502 (4th Cir. 1987) (stating that, because Code does not define "contribution," courts have attempted to define "contribution" by examining Congress' intent in enacting charitable contribution deduction); Graham v. Commissioner, 822 F. 2d 844, 848 (9th Cir. 1987) (discussing tests that courts have used to determine whether payments constitute contributions under § 170); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (discussing methods courts have employed in defining "contribution" under § 170); Colliton, *supra* note 9, at 973-74 ((noting that courts and Internal Revenue Service (Service) have not satisfactorily defined "contribution" under § 170)); Hobbet, *supra* note 9, at 2 (discussing difficulty of defining "contribution" under § 170 without congressional guidance).

15. *See* Sedam v. United States, 518 F.2d 242, 245 (7th Cir. 1975) (stating that payment is contribution under § 170 if contributor does not intend to receive commensurate benefit in return for payment); Oppewal v. United States, 468 F.2d 1000, 1002 (1st Cir. 1972) (noting that taxpayer's voluntary payment to charity is contribution if amount of payment exceeds value of benefit which taxpayer received in return for payment to charity); Singer Co. v. United States, 449 F.2d 413, 422 (Cl. Ct. 1971) (concluding that taxpayer's payment is charitable contribution if taxpayer did not expect financial return equal in value to amount of taxpayer's payment); Dejong v. Commissioner, 309 F.2d 373, 376 (9th Cir. 1962) (applying "detached and disinterested generosity" test to determine whether voluntary payments constituted contributions under § 170).

16. *See, e.g*, Oppewal v. Commissioner, 468 F.2d 1000, 1002 (1st Cir. 1972) (determining whether voluntary payments that parents made to school for children's education constituted deductible charitable contributions under § 170); Singer Co. v. United States, 449 F.2d 413, 415 (Cl. Ct. 1971) (considering whether sewing machines that corporation voluntarily sold at discount to charitable organizations constituted deductible charitable contributions); Dejong v. Commissioner, 309 F.2d 373, 376 (9th Cir. 1962) (assessing whether voluntary payments that parents made to school for children's education constituted deductible charitable contributions).

17. *See* Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (considering whether mandatory payments that parishioners made to church constitute deductible charitable contributions under § 170); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (same); Staples v. Commissioner, 821 F.2d 1324, 1325 (8th Cir. 1987) (same); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (same).

18. *See supra* note 17 (noting circuit courts that have considered and decided whether mandatory payments that taxpayers made to church are deductible as contributions under § 170).

of Scientology.[19] The primary goal of the Church of Scientology is to save society by reaching a "State of Clear," which is an increased level of spiritual awareness.[20] To reach full spiritual awareness, a parishioner participates in two religious services or practices called "auditing" and "training."[21] The goal of auditing is to benefit each level of life, or "dynamic," including one's self, family and sex, one's group, mankind, living things, the physical universe, the spiritual universe, and the Supreme Being.[22] Through "training," which is the study of the Church of Scientology's scriptures, Scientologists become enlightened and teach other individuals to understand the teachings and practices of Scientology.[23] Scientologists believe that participation in auditing and training services benefits both parishioners and society.[24]

In return for permitting church members to participate in auditing and training services, the Church of Scientology requires church members to make payments to the church.[25] The church refers to the payments as "fixed donations."[26] Fixed donations are the primary source of funding for the church's operations.[27] Because the church believes that individuals should not receive a benefit without giving something of themselves in return for the benefit, the church requests that parishioners who receive the benefit of religious services contribute monetarily to the church.[28] Some parishioners

---

19. *See* Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (determining whether members may deduct from gross income mandatory payments that members made to Church of Scientology); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (considering whether members of Church of Scientology may deduct from gross income mandatory payments that members made to church); Staples v. Commissioner, 821 F.2d 1324, 1325 (8th Cir. 1987) (noting that taxpayer was member of Church of Scientology and made mandatory payments to church); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (stating that cases deciding deductibility of parishioners' mandatory payments to Church of Scientology are factually indistinguishable).

20. *See* Brief for Appellant at 4, Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987) (No. 86-2090). Founder L. Ron Hubbard based the Scientology religion on his teachings and research. *Id.* Each church member, or Scientologist, believes that studying the teachings and research of the church's founder will lead the member to an understanding of man's existence. *Id.* Scientologists strive to make themselves aware that they are spiritual beings. *Id.*

21. *Id.*

22. *Id.* Scientologists divide life into eight steps or "dynamics." *Id.* Members of the Church of Scientology believe that, by increasing awareness, an individual benefits all eight dynamics. *Id.* Scientologists maintain that the improvement of the eight dynamics will lead to a civilization without war, crime, or insanity. *Id.*

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *See* Brief for Appellant at 4, Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987) (No. 86-2090); *see also* Graham v. Commissioner, 822 F.2d 844, 846-47 (9th Cir. 1987) (stating that Doctrine of Exchange requires parishioners of Church of Scientology to make mandatory payments to church in return for religious services). Under the Doctrine of Exchange, a basic tenet of Scientology, individuals and organizations need to balance exchanges or the "inflow

who contributed monetarily to the church in the form of fixed donations attempted to deduct the amount of the mandatory contributions from their gross income.[29] The Service, however, did not permit the parishioners to

---

and outflow" within and between dynamics to produce ethical individuals. *See* Brief for Appellant, *supra*, at 4; *see also Graham*, 822 F.2d at 846-47 (explaining that Doctrine of Exchange is basic tenet of Scientology requiring members that receive benefits to give something of themselves in return for benefits). The Doctrine of Exchange provides the foundation for the structure of fixed donations. *See Graham*, 822 F.2d at 846-47. Because the Scientology religion is based on the Doctrine of Exchange, the church requires members to make mandatory payments to the church in return for the religious services that the church provides for the members. *Id.*

29. *See* Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (assessing whether parishioner may deduct from gross income mandatory payments); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (determining whether mandatory payments are charitable contributions and, thus, deductible under § 170); Staples v. Commissioner, 821 F.2d 1324, 1325 (8th Cir. 1987) (considering whether parishioners may take deductions for mandatory payments that parishioners made to church); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (considering whether mandatory payments constitute deductible contributions under § 170 of Code). In *Staples v. Commissioner* Maureen and Michael Staples made mandatory payments to the Church of Scientology. *Staples*, 821 F.2d at 1325. The Service did not permit the Staples to take a deduction for the mandatory payments. *Id.* In affirming the Service's decision, the United States Tax Court held that, because the Church of Scientology required parishioners to make mandatory payments in return for religious services, the mandatory payments were not contributions under § 170 of the Code. *Id.* The Staples appealed the Tax Court's decision to the United States Court of Appeals for the Eighth Circuit. *Id.*

In *Hernandez v. Commissioner*, a case similar to *Staples*, Robert L. Hernandez made mandatory payments to the Church of Scientology. *Hernandez*, 819 F.2d at 1215. During 1981, Hernandez paid $7,338 to the Church of Scientology in exchange for religious services. *Id.* Hernandez deducted the mandatory payments as charitable contributions on his 1981 federal income tax return. *Id.* The Service, however, disallowed the deduction and assessed a $2245 tax deficiency against Hernandez. *Id.* The United States Tax Court affirmed the Service's refusal to permit a deduction for the mandatory payments and the deficiency assessment against Hernandez. *Id.* Hernandez appealed the Tax Court's decision to the United States Court of Appeals for the First Circuit.

Similarly, the parishioners in *Graham v. Commissioner* also were members of the Church of Scientology. *Graham*, 822 F.2d at 846. The three parishioners in *Graham* made mandatory payments to the Church of Scientology. *Id.* In 1972 Graham paid $1682 to the Church of Scientology, Hawaii, and to the Scientology and Dianetic Center of Hawaii. *Id.* at 847. Graham deducted the amount of the payments as charitable contributions on her 1972 income tax return. *Id.* In 1975 Hermann paid the Church of Scientology, American Saint Hill Organization, $4875 and deducted the amount of the payments as charitable contributions. *Id.* In 1977, Maynard paid the Church of Scientology, Mission of Riverside, $4,698.91. *Id.* Maynard deducted $5000 as a charitable contribution on his 1977 income tax return. *Id.* The Service did not permit the parishioners to take deductions for the mandatory payments. *Id.* The Tax Court affirmed the Service's decision that the mandatory payments were not contributions under § 170 because the payments were mandatory and the parishioners expected a commensurate benefit in return for their payments to the church. *Seeid.*; Graham v. Commissioner, 83 T.C. 575, 581 (1984). The parishioners appealed the Tax Court's adverse ruling to the United States Court of Appeals for the Ninth Circuit. *Graham*, 822 F.2d at 846.

As in the other Scientology cases, the parishioner in *Miller v. Commissioner* made mandatory payments to the Church of Scientology. *Miller*, 829 F.2d at 501. The Service refused to permit the parishioner to take a deduction for the mandatory payments that she made to the church. *Id.* The Service held that the parishioner could not deduct the payments

take deductions for the amount of the mandatory payments that the parishioners made to the church.[30] The United States Tax Court affirmed the Service's decision not to permit any of the parishioners to deduct from gross income the amount of the fixed donations that the parishioners made to the church.[31] Each of the parishioners appealed the Tax Court's adverse decisions to a United States Circuit Court of Appeals.[32]

In *Graham v. Commissioner*[33] the United States Court of Appeals for the Ninth Circuit considered whether mandatory charitable donations that parishioners made to the Church of Scientology constituted contributions that were deductible under section 170 of the Code.[34] In determining whether the mandatory donations were deductible, the Ninth Circuit applied a test that the circuit had adopted in previous decisions for determining whether a voluntary donation qualifies as a deductible contribution under section 170.[35] The "detached and disinterested generosity" test which the circuit

---

unless she could establish that the payments exceeded the value of the benefits she received from the church in return for her payments. *Id.* The Tax Court affirmed the Service's opinion. *Id.* Miller appealed to Tax Court's decision to the United States Court of Appeals for the Fourth Circuit. *Id.*

30. *See supra* note 29 and accompanying text (noting that Service disallowed parishioners' deductions for mandatory payments that parishioners made to church).

31. *See* Graham v. Commissioner, 83 T.C. 575, 581 (1984) (discussing Tax Court's decision that payments to church did not constitute charitable contributions under § 170 of the Code); *supra* note 29 and accompanying text (noting that Tax Court disallowed all parishioners deductions for mandatory payments they made to church). The parishioners in *Graham*, *Staples*, *Hernandez*, and *Miller* stipulated at the Tax Court level that the Tax Court's finding of fact and law in the test case, *Graham v. Commissioner*, in the Ninth Circuit would be binding on all of the parishioners. *See Miller*, 829 F.2d at 501.

32. *See* Staples v. Commissioner, 821 F.2d 1324, 1325 (8th Cir. 1987) (considering whether parishioners may take deductions for mandatory payments that parishioners made to church); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (determining whether mandatory payments constitute contributions under § 170 of Code); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (assessing whether mandatory payments are charitable contributions and thus deductible under § 170); Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (discussing whether parishioner may deduct mandatory payments from gross income); *supra* note 29 and accompanying text (discussing parishioners' appeal of Tax Court's adverse holding to federal circuit courts).

33. 822 F.2d 844 (9th Cir. 1987).

34. Graham v. Commissioner, 822 F.2d 844, 848-50 (9th Cir. 1987).

35. *Id.* at 848; *see* Babilonia v. Commissioner, 681 F.2d 678, 679 (9th Cir. 1982) (applying detached and disinterested generosity test to decide whether parents' traveling expenses to see daughter perform in ice skating competitions constituted charitable contributions under § 170); Allen v. United States, 541 F.2d 786, 788 (9th Cir. 1976) (discussing application of detached and disinterested generosity test to assess whether landowner's dedication of land to city constituted deductible charitable contribution); Collman v. Commissioner, 511 F.2d 1263, 1267 (9th Cir. 1975) (applying detached and disinterested generosity test to determine whether landowner's voluntary transfer of land to county for road expansion was deductible charitable contribution); Stubbs v. United States, 428 F.2d 885, 887 (9th Cir. 1970) (discussing whether landowner's dedication of land for public road constituted charitable contribution under detached and disinterested generosity test), *cert. denied*, 400 U.S. 1009 (1971); Dejong v. Commissioner, 309 F.2d 373, 376-79 (9th Cir. 1962) (considering whether parents' voluntary

court adopted in the voluntary contribution cases provides that a contribution is charitable if a contributor makes the payment with detached and disinterested motives.[36] In *Graham*, the Ninth Circuit stated that, under the detached and disinterested generosity test, a contributor could take a charitable deduction only when the contributor's primary purpose in making a voluntary or mandatory contribution was to benefit the charity rather than the contributor.[37] In support of its use of the detached and disinterested generosity test, the Ninth Circuit stated that the test was in accord with *United States v. American Bar Endowment*,[38] a recent decision by the Supreme Court of the United States.[39]

In *American Bar* the United States Supreme Court held that a contribution is deductible if an individual transfers money or property to a charitable organization without receiving adequate consideration in return for the contribution (market test).[40] The taxpayer in *American Bar* made a charitable payment to a tax-exempt endowment fund.[41] In return for the taxpayer's payment, the endowment fund transferred an insurance policy to the taxpayer.[42] The Supreme Court determined that the taxpayer's payment to the endowment fund consisted of both a charitable contribution and a transfer in return for a marketable benefit to the taxpayer.[43] Because the

---

tuition payments for children's education constituted deductible charitable contributions under detached and disinterested generosity test); *infra* notes 48-53 and accompanying text (discussing United States Court of Appeals for Ninth Circuit's application in *Graham v. Commissioner* of detached and disinterested generosity test to determine if mandatory payments constituted charitable contributions under § 170).

36. *Graham*, 822 F.2d at 848.

37. *Id.*

38. 477 U.S. 105 (1986).

39. *Graham*, 822 F.2d at 849. Although the United States Court of Appeals for the Ninth Circuit in *Graham v. Commissioner* believed that the decision of the United States Supreme Court in *United States v. American Bar Endowment* supported the application of the detached and disinterested generosity test under § 170, the Supreme Court did not apply the detached and disinterested generosity test in *American Bar*. *See American Bar*, 477 U.S. at 115 (showing that Supreme Court did not apply detached and disinterested generosity test to assess whether taxpayer's payment to endowment fund constituted charitable contribution); *Graham*, 822 F.2d at 849 (citing *American Bar* decision as support for applying detached and disinterested generosity test to decide whether parishioners' mandatory payments to church constituted charitable contributions); *infra* notes 40-45 (discussing test that Supreme Court applied in *American Bar* to determine whether payment constituted contribution under § 170).

40. United States v. American Bar Endowment, 477 U.S. 105 (1986). In *American Bar* the United States Supreme Court held that a payment is not a charitable contribution if the taxpayer making the payment received a benefit from the charity with a fair market value equal to the amount of the taxpayer's payment. *Id.*

41. *Id.* at 110.

42. *Id.*

43. *Id.* at 513. In *United States v. American Bar Endowment* the United States Supreme Court noted that the taxpayer received an insurance policy from the endowment fund for making a payment to the fund. *Id.* The Supreme Court stated that the insurance policy was a marketable benefit because similar insurance policies with easily calculable values existed in the market place. *Id.* The Supreme Court calculated the fair market value of the benefit that

insurance policy had a fair market value and directly benefited the taxpayer, the Supreme Court did not allow the taxpayer to deduct the amount of the taxpayer's contribution to the endowment fund that equaled the value of the insurance policy.[44] The Supreme Court permitted the taxpayer, however, to deduct the portion of the payment to the endowment fund that exceeded the fair market value of the insurance policy.[45]

Accepting the *American Bar* decision as support for applying the detached and disinterested generosity test to determine whether a mandatory donation constitutes a contribution under section 170, the Ninth Circuit in *Graham* held that the parishioners were not detached and disinterested contributors because the parishioners expected to receive religious services in return for their contributions to the church.[46] The court determined, therefore, that the parishioners did not intend to make contributions to the church.[47] In *American Bar*, the Supreme Court held that a portion of the taxpayer's payment was not charitable because the insurance policy that the taxpayer received was similar to other insurance policies that had fair market values.[48] Similarly, the Ninth Circuit stated in *Graham* that the parishioners

---

the taxpayer received in return for his payment to the endowment fund by comparing the amount of the taxpayer's payment with the fair market value of a comparable insurance policy in the marketplace. *Id.* If the fair market value of the insurance policy that the endowment fund gave to the taxpayer for making a payment to the fund was of equal value to the amount of the taxpayer's payment, the Supreme Court held that the taxpayer's payments would not constitute a deductible charitable contribution. *Id.*

44. *Id.* In *United States v.American Bar Endowment* the United States Supreme Court determined that the insurance policy that the taxpayer received in return for his payment to an endowment fund had a value equal in amount to the fair market value of a comparable insurance policy. *Id.*

45. *Id.*

46. Graham v. Commissioner, 822 F.2d 844, 849 (9th Cir. 1987). In *Graham v. Commissioner* the United States Court of Appeals for the Ninth Circuit thought that the *United States v. American Bar Endowment* decision supported the Ninth Circuit's adoption of the detached and disinterested generosity test under § 170, although the United States Supreme Court did not apply the detached and disinterested generosity test in *American Bar*. *See id.*; *see also American Bar*, 477 U.S. at 513 (adopting market test to determine whether payments to endowment fund were charitable contributions under § 170 of Code). Thus, the Ninth Circuit incorrectly cited the *American Bar* decision as support for the Ninth Circuit's application of the detached and disinterested generosity test to determine whether a payment constituted a contribution under § 170. *See Graham*, 822 F.2d at 849 (citing *American Bar* decision as support for use of detached and disinterested generosity test to determine whether payments were deductible charitable contributions under § 170); *see also American Bar*, 477 U.S. at 513 (applying market test rather than detached and disinterested generosity test to determine if taxpayer's payment to endowment fund constituted deductible charitable contribution).

47. *See Graham*, 822 F.2d at 849 (holding that mandatory payments to church did not constitute charitable contributions because parishioners did not make payments with detached and disinterested motives).

48. *American Bar*, 477 U.S. at 513. In *United States v. American Bar Endowment* a taxpayer made a payment to an endowment fund and the endowment fund gave the taxpayer an insurance policy in return for the taxpayer's payment. *Id.* The United States Supreme Court in *American Bar* determined that the taxpayer's payment consisted of a portion that was a charitable contribution and a portion that was not a charitable contribution. *Id.* The Supreme

could not deduct the payments that the parishioners made to the church because the religious services had a fair market value.[49] The Ninth Circuit noted, however, that it easily could determine the economic value of the religious services, not because similar religious services with fair market values existed, but because the church placed a monetary value on the religious services.[50] Because the Ninth Circuit relied on the mandatory payment structure rather than a fair market value analysis in holding that the parishioners' payments were not deductible charitable contributions, the Ninth Circuit's decision in *Graham* did not follow the reasoning of *American Bar*.[51] The *Graham* court noted that the existence of the church's fixed payment structure was evidence that the religious services possessed a fair market value and were transferable in a commercial transaction.[52] Because of the church's mandatory payment structure, the Ninth Circuit held that the parishioners never intended to contribute to the church and, therefore, that the payments were not deductible as contributions under section 170 of the Code.[53]

Court held that the portion of the taxpayer's payment to the endowment for an insurance policy was not charitable because the value of the policy equaled the fair market value of comparable insurance policies. *Id.*; *see supra* note 44 and accompanying text (discussing United States Supreme Court's method in *American Bar* for determining value of insurance policy that taxpayer received in return for his payment to endowment fund).

49. Graham v. Commissioner, 822 F.2d 844, 849 (9th Cir. 1987) (stating that parishioners' payments to Church of Scientology were not deductible because payments were mandatory). Patterning its reasoning after the United States Supreme Court in *United States v. American Bar Endowment*, the United States Court of Appeals for the Ninth Circuit held in *Graham v. Commissioner* that the parishioners' payments to the Church of Scientology were nondeductible because the religious services that the parishioners received in return for their payments had a fair market value. *Id.*; *see American Bar*, 477 U.S. at 513 (holding that taxpayer's payment to endowment fund in return for insurance policy did not constitute charitable contribution because payment was equal in value to fair market value of insurance policy); *supra* notes 40-45 and accompanying text (discussing United States Supreme Court's decision in *American Bar*). Unlike the Supreme Court in *American Bar*, which determined the fair market value of the taxpayer's benefit by examining the fair market value of comparable benefits, the Ninth Circuit determined the market value of religious services by examining only the payments that the Church of Scientology required from the members. *See id.*; *see also American Bar*, 477 U.S. at 513 (applying market test to determine whether taxpayer's payment was charitable when benefit that taxpayer received in return for payment was equal in value to fair market value of comparable benefits). Thus, the Ninth Circuit did not follow the Supreme Court's method of comparing the value of the benefit that the taxpayer received in return for his payment with the fair market value of a similar benefit. *See Graham*, 822 F.2d at 849 (assessing market value of religious services by focusing on amount of payments that church required members to pay); *see also American Bar*, 477 U.S. at 513 (determining fair market value of insurance policy by examining fair market value of similar insurance policies).

50. *See supra* note 46 and accompanying text (suggesting that United States Court of Appeals for Ninth Circuit's application of detached and disinterested generosity test in *Graham* to determine whether mandatory payments constituted charitable contributions was not in accordance with United States Supreme Court's decision in *American Bar*).

51. *Id.*

52. Graham v. Commissioner, 822 F.2d 844, 849 (9th Cir. 1987).

53. *Id.*

Just as the Ninth Circuit held in *Graham*, the United States Court of Appeals for the First Circuit held in *Hernandez v. Commissioner*[54] that a parishioner's mandatory payments to the Church of Scientology were not deductible charitable contributions.[55] The First Circuit applied the *American Bar* market test and the detached and disinterested generosity test to assess whether the payments constituted contributions under section 170 of the Code.[56] The First Circuit first applied the detached and disinterested test to ascertain whether the parishioner made payments to the charity with the intention of making a contribution rather than making a payment to receive a benefit.[57] The First Circuit explained that, if the court found that the parishioner intended to contribute to the charity, the court would apply the *American Bar* market test to determine whether the value of the parishioner's contribution exceeded the value of the benefit that the parishioner received from the charity in return for the contribution.[58] If the First Circuit found, however, that the parishioner's payment did not meet the requirements of the detached and disinterested generosity test, the court would not apply the market test because the parishioner must intend to make a contribution before the court would determine under the market test which portion of the parishioner's payment constituted a deductible contribution.[59] The First Circuit stated in *Hernandez* that the parishioner did not demonstrate an intent to contribute an amount in excess of the value of the religious services

---

54. 819 F.2d 1212 (1st Cir. 1987).

55. Hernandez v. Commissioner, 819 F.2d 1212, 1218 (1st Cir. 1987).

56. *Hernandez*, 819 F.2d at 1216-18. In *Hernandez v. Commissioner*, the United States Court of Appeals for the First Circuit maintained that a charitable contribution is deductible to the extent that the payment exceeds the fair market value of the benefit which the contributor receives, but only if the contributor intended to contribute to the charity by paying an amount in excess of the value of the benefit received. *Id.* at 1218.

57. *Id.* at 1218 (applying detached and disinterested generosity test to determine whether parishioner's mandatory payments to church constituted deductible charitable contributions). In *Hernandez v. Commissioner* the United States Court of Appeals for the First Circuit held that Hernandez, the appellant, did not prove that the mandatory payments which he made to the Church of Scientology exceeded the church's cost for providing religious services. *Id.* The First Circuit also found that Hernandez failed to prove that he intended to contribute to the church. *Id.* The First Circuit stated, therefore, that Hernandez's payments were not deductible charitable contributions under the detached and disinterested generosity test. *Id.*

58. *Id.* In *Hernandez v. Commissioner* the United States Court of Appeals for the First Circuit noted that, if the parishioner's mandatory payments to the Church of Scientology did not constitute charitable contributions under the detached and disinterested generosity test, the court did not need to apply the market test that the United States Supreme Court adopted in *United States v. American Bar Endowment*. *Id.*; *see also* United States v. American Bar Endowment, 477 U.S. 105 (1986) (applying market test to determine whether taxpayer's voluntary payment to endowment fund constituted deductible charitable contribution under § 170); *supra* notes 40-45 and accompanying text (discussing United States Supreme Court's application of market test in *American Bar* to assess whether taxpayer's payment to endowment fund constituted deductible charitable contribution).

59. *Hernandez*, 819 F.2d at 1218 (noting that payments must meet requirements of detached and disinterested generosity test before First Circuit will apply *American Bar* test).

which the parishioner received.[60] Because the court found that the parishioner did not intend to make a contribution to the church, the First Circuit stated that the court need not apply the market test under *American Bar*.[61] Thus, under the detached and disinterested generosity test analysis, the First Circuit held that the parishioner's payments were not contributions under section 170.[62]

Concurring with the First Circuit's holding in *Hernandez*, the United States Court of Appeals for the Fourth Circuit in *Miller v. Internal Revenue Service*[63] held that a parishioner's mandatory payments to the Church of Scientology were not deductible contributions under section 170.[64] In determining whether the mandatory payments were contributions under section 170 of the Code, the Fourth Circuit recognized that neither the courts nor Congress has provided a satisfactory definition of "contribution" or an adequate test for evaluating whether a payment is a deductible contribution.[65] The Fourth Circuit stated, however, that the court did not need to resolve the difficulty in adopting a test to assess whether the parishioner's payments were charitable contributions.[66] In *Miller*, the Fourth Circuit declined to choose a particular test because the court believed that the payments which the parishioner made to the church did not constitute deductible charitable contributions under any of the available tests.[67] Because the court believed

---

60. *Id.* at 1218 (noting that Hernandez did not prove that he intended to contribute to church). In *Hernandez v. Commissioner* the First Circuit held that Hernandez did not demonstrate to the court that Hernandez's payment exceeded the Church of Scientology's cost in providing religious services to Hernandez. *Id.* The First Circuit also found that Hernandez failed to prove that he intended the mandatory payments to the church to constitute charitable contributions. *Id.*; *see also supra* notes 56-59 and accompanying text (discussing First Circuit's holding in *Hernandez* that payments must meet requirements of detached and disinterested generosity test before First Circuit will apply *American Bar* test).

61. *Hernandez*, 819 F.2d at 1218; *see also supra* note 59 and accompanying text (noting that First Circuit will not apply market test if parishioner's payment does not meet requirements of detached and disinterested generosity test).

62. *Hernandez*, 819 F.2d at 1218; *see supra* notes 56-61 and accompanying text (discussing First Circuit's rationale for holding that parishioner's mandatory payments to Church of Scientology did not constitute deductible charitable contributions under § 170).

63. 829 F.2d 500 (4th Cir. 1987).

64. Miller v. Commissioner, 829 F.2d 500, 505 (4th Cir. 1987).

65. *Miller*, 829 F.2d at 501-02. Recognizing the lack of congressional guidance in determining whether a payment constitutes a deductible charitable contribution, the United States Court of Appeals for the Fourth Circuit in *Miller v. Commissioner* noted that a limited amount of legal literature has addressed the difficulty in determining whether a payment is a charitable contribution. *Id.* The Fourth Circuit stated that legal writers have considered whether courts should investigate the transferor's subjective intent or motive in making a payment, or objectively assess the difference in value of the transferred property and any return benefits to the transferor. *Id.* at 502; *see generally* Colliton, *supra* note 9, at 1000-05 (discussing test that courts should apply in determining whether taxpayers' payments constitute deductible charitable contributions under § 170); Hobbet, *supra* note 9, at 29-30 (same).

66. *Miller*, 829 F.2d at 502; *see infra* notes 66-67 and accompanying text (discussing rationale of United States Court of Appeals for the Fourth Circuit in *Miller* for not adopting test for determining whether payment constitutes charitable contribution).

67. *Miller*, 829 F.2d at 502-03.

that all of the available tests for determining whether payments are contributions under section 170 coalesce, the Fourth Circuit applied the detached and disinterested generosity test to demonstrate by example that the parishioner's payments were not charitable contributions.[68] The court stated that the mandatory payment structure of the church was indicative of the parishioner's intent to pay money in exchange for a commensurate benefit in the form of religious services.[69] Because the court held that the mandatory payment structure indicated that the parishioner did not intend to contribute to the church when he made the mandatory payments, the Fourth Circuit held that the parishioner's payments did not constitute a contribution and were not deductible under section 170.[70]

Contrary to the other federal circuit courts' holdings that the parishioners' fixed payments were not deductible, the United States Court of Appeals for the Eighth Circuit in *Staples v. Commissioner*[71] held that a parishioners' mandatory payments to the Church of Scientology were deductible as charitable contributions under section 170 of the Code.[72] The Eighth Circuit stated that a charitable contribution is a transfer of money in return for less than adequate consideration (commensurate benefit test).[73] In deciding whether the payments were deductible, the Eighth Circuit noted that, in *Helvering v. Bliss*,[74] the United States Supreme Court had suggested that courts broadly construe the charitable contribution deduction to encourage taxpayers to make charitable contributions.[75] In accordance with the Supreme Court's ruling that courts broadly should construe the charitable contribution deduction, the Eighth Circuit stated that a contribution to a charity benefits the charity regardless of the contributor's intent.[76] Thus, the Eighth

---

68. *Id.* at 503.

69. *Id.* In *Miller v. Commissioner* the United States Court of Appeals for the Fourth Circuit stated that the structure of a transaction evidences the motives of the transferor. *Id.* According to the Fourth Circuit, a church's mandatory payment structure indicates that a parishioner making mandatory payments does not intend to make charitable contributions to the church. *Id.*

70. *Id.* at 505. In *Miller v. Commissioner* the United States Court of Appeals for the Fourth Circuit held that, because the Church of Scientology's payment scheme is mandatory, the church's payment structure demonstrated that the parishioner did not intend to contribute to the church. *Id.* Thus, the Fourth Circuit held that the parishioner's mandatory payments to the Church of Scientology did not satisfy the detached and disinterested generosity test. *Id.*

71. 821 F.2d 1324 (8th Cir. 1987).

72. Staples v. Commissioner, 821 F.2d 1324, 1327 (8th Cir. 1987).

73. *Id.* at 1326; *see also* United States v. American Bar Endowment, 477 U.S. 105, 513 (noting that payment is not deductible charitable contribution under § 170 if amount of payment is commensurate with value of benefit that transferor received in return for payment).

74. 293 U.S. 144 (1934).

75. *Staples*, 821 F.2d at 1326; *see also supra* notes 3-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction); *cf.* Helvering v. Bliss, 293 U.S. 144, 151 (1934) (stating that courts should construe charitable deduction in taxpayer's favor because Congress primarily enacted § 170 to stimulate taxpayers' contributions to charities).

76. *Staples*, 821 F.2d at 1326; *see* Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146, 147 (1st Cir.) (stating that Congress intended charitable contributions to benefit charitable

Circuit rejected the detached and disinterested generosity test, noting that a contributor's intent in making a contribution is irrelevant in determining whether a payment is a contribution.[77] The Eighth Circuit maintained, therefore, that, to comport with the Supreme Court's suggestion of broadly applying the charitable deduction and with Congress' goals in enacting the charitable deduction, courts should permit taxpayers to take deductions for contributions that benefit a charity, regardless of the taxpayers' intent.[78] The Eighth Circuit in *Staples* stated that the church directly benefited from the parishioners' payments and that the parishioners received only religious benefits in return for their payments.[79] The court recognized, furthermore, that no court ever has denied a deduction to a taxpayer for payments that the taxpayer made to a church in return for the right to participate in religious services.[80] Additionally, the Eight Circuit stated that religious observances of any faith spiritually benefit the general public whether the religion practices congregational or individual worship and whether the donations are voluntary or mandatory.[81] After determining that the church and the public benefited from the mandatory payments and that the parishioners received only religious benefits in return for their payments, the Eighth Circuit held that the payments were deductible under section 170.[82]

The divergent reasoning between the Eighth Circuit and the other federal circuit courts demonstrates that the federal courts of appeals have had difficulty in determining whether mandatory payments that parishioners make to the Church of Scientology in return for religious services are deductible as charitable contributions under section 170 of the Code.[83] In

---

organizations regardless of transferor's intent in making contributions), *cert. denied*, 389 U.S. 976 (1967); Haak v. United States, 451 F. Supp. 1087, 1092 (W.D. Mich. 1978) (noting that courts should not examine intent of contributor because analysis of taxpayer's intent and motive in making contributions is unreliable).

77. *See Staples*, 821 F.2d at 1327 (stating that detached and disinterested generosity test is inapplicable under § 170 because transferor's intent is irrelevant under § 170).

78. *See supra* notes 74-77 and accompanying text (discussing United States Supreme Court's belief that courts broadly should construe "contribution" to support Congress' goal of stimulating charitable contributions under § 170).

79. *See Staples*, 821 F.2d at 1325 (stating that parishioners' payments are source of church's financial resources). In *Staples v. Commissioner* the United States Court of Appeals for the Eighth Circuit stated that religious observances of any faith spiritually benefit the general public and members of the faith. *Id.* at 1326. The Eighth Circuit noted that the private benefit that a parishioner receives from religious observances is incidental to the broader good served by the parishioner's ability to participate in religious observances. *Id.*

80. *Id.* at 1326.

81. *Id.* at 1326; *see* Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943) (stating that preachers' selling religious literature rather than donating literature to parishioners did not alter benefits that religion provided for public or change religion into commercial transaction).

82. *Staples*, 821 F.2d at 1327.

83. *See supra* notes 33-82 and accompanying text (discussing federal circuit courts' application of different tests for determining whether mandatory payments that individuals made to Church of Scientology are deductible charitable contributions under § 170). Because the federal circuit courts have encountered difficulty in analyzing mandatory contributions

Graham, the Ninth Circuit adopted the detached and disinterested generosity test to assess whether the parishioners intended to contribute to the church.[84] The First Circuit in *Hernandez* adopted both the detached and disinterested generosity test and the *American Bar* market test to evaluate whether the parishioner's payments constituted contributions.[85] The First Circuit stated, however, that the payments must qualify as donations under the detached and disinterested generosity test before the court would apply the *American Bar* market test to determine whether the payments constitute deductible charitable contributions under section 170.[86] Although the Fourth Circuit refused to adopt a particular test in *Miller* because the court believed that all of the tests would render the same result, the court applied the detached and disinterested generosity test to demonstrate by example that the parishioner never intended to contribute to the church and that the payments were not contributions under section 170.[87] The Eighth Circuit in *Staples*, however, refused to delve into the parishioners' intent in contributing to the church.[88] In determining that the parishioners' mandatory payments were contributions under section 170, the Eighth Circuit adopted the commensurate benefit test, holding that the value of the benefits that the church received from the parishioners' payments exceeded the value of the benefits that the parishioners received from the church in return for making the

---

under section 170 of the Code, the circuit courts have applied various tests to determine whether mandatory payments constitute deductible charitable contributions. *See Graham*, 822 F.2d at 846 (applying detached and disinterested generosity test); *Hernandez*, 819 F.2d at 1216 (applying detached and disinterested generosity test and *American Bar* test); *Miller*, 829 F.2d at 501 (contending that all tests virtually are identical); *Staples*, 821 F.2d at 1326 (applying commensurate benefit test).

84. Graham v. Commissioner, 822 F.2d 844, 849 (9th Cir. 1987); *see supra* notes 34-53 and accompanying text (discussing United States Court of Appeals for Ninth Circuit's application of detached and disinterested generosity test in *Graham v. Commissioner* to determine whether mandatory payments are deductible charitable contributions).

85. *See* Hernandez v. Commissioner, 819 F.2d 1212, 1218 (1st Cir. 1987) (applying detached and disinterested generosity test and *American Bar* market test to determine whether parishioner's payments to church constituted charitable contributions); *see also supra* notes 54-62 and accompanying text (discussing First Circuit's decision in *Hernandez*).

86. *See Hernandez*, 819 F.2d at 1218 (applying detached and disinterested generosity test before applying *American Bar* test); *see also supra* notes 56-59 and accompanying text (discussing First Circuit's explanation in *Hernandez* that parishioner's payments must meet requirements of detached and disinterested generosity test before court would apply *American Bar* test to determine whether parishioner's payments to church constituted charitable contributions).

87. Miller v. Commissioner, 829 F.2d 500, 502 (4th Cir. 1987); *see supra* notes 64-70 and accompanying text (discussing Fourth Circuit's application of detached and disinterested generosity test in *Miller* to demonstrate by example that parishioners' mandatory payments were not deductible charitable contributions).

88. Staples v. Commissioner, 821 F.2d 1324, 1326 (8th Cir. 1987) (refusing to focus on parishioner's intent in determining whether parishioner's payments constituted charitable contributions); *see supra* notes 72-82 and accompanying text (discussing Eighth Circuit's application of commensurate benefit test in *Staples* to determine whether parishioner's mandatory payments to church were deductible charitable contributions under § 170).

payments.[89] Although a majority of the federal circuit courts has employed the detached and disinterested generosity test to determine whether mandatory payments to the Church of Scientology are contributions, a careful analysis of the detached and disinterested generosity test reveals that the Eighth Circuit was correct in refusing to adopt the test to assess whether mandatory payments constitute deductible charitable contributions under section 170 of the Code.[90]

Although some circuit courts have applied the detached and disinterested generosity test to assess whether payments qualify as charitable contributions under section 170, the United States Supreme Court originally developed the test in *Commissioner v. Duberstein*[91] for determining whether a voluntary donation constitutes a gift under section 102 of the Code.[92] By categorizing

---

89. *Staples*, 821 F.2d at 1326; *see also supra* note 88 (discussing Eighth Circuit's use of commensurate benefit test in *Staples* to determine whether parishioners' mandatory payments to Church of Scientology constituted deductible charitable contributions).

90. *See infra* notes 92-160 and accompanying text (suggesting that courts should adopt commensurate benefit test to assess whether mandatory payments constitute deductible charitable contributions under § 170).

91. 363 U.S. 278, 284 (1960).

92. *See* Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (applying detached and disinterested generosity test, which provides that contributions are charitable if contributors made payments for detached and disinterested motives); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (applying detached and disinterested generosity test and *American Bar* market test); Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (applying detached and disinterested generosity test to demonstrate by example that mandatory payments are not deductible charitable contributions under any test).

In *Graham v. Commissioner*, the United States Court of Appeals for the Ninth Circuit adopted the detached and disinterested generosity test to determine whether the parishioner's mandatory payments to the Church of Scientology constituted deductible charitable contributions under § 170. *See Graham*, 822 F.2d at 846; *see also supra* notes 34-53 and accompanying text (discussing Ninth Circuit's application of detached and disinterested generosity test in *Graham v. Commissioner* to determine whether mandatory payments are deductible charitable contributions). In *Hernandez v. Commissioner*, the United States Court of Appeals for the First Circuit also applied the detached and disinterested generosity test to assess whether the parishioner's mandatory payments to the Church of Scientology were charitable contributions. *See Hernandez*, 819 F.2d at 1216; *see also supra* notes 54-61 and accompanying text (discussing First Circuit'sapplication of detached and disinterested test and *American Bar* test in *Hernandez v. Commissioner* for assessing whether parishioner's mandatory payments were deductible charitable contributions). Although the court did not adopt any test, the United States Court of Appeals for the Fourth Circuit applied the detached and disinterested generosity test in *Miller v. Commissioner* to show that mandatory payments which the parishioners made to the Church of Scientology were not deductible charitable contributions under § 170. *See Miller*, 829 F.2d at 501; *see also supra* notes 62-69 and accompanying text (discussing Fourth Circuit's application of detached and disinterested generosity test in *Miller v. Commissioner* to demonstrate by example that mandatory payments were not deductible charitable contributions under any test).

Although some federal circuit courts have examined payments under § 170 by applying the detached and disinterested generosity test, the United States Supreme Court originally developed the detached and disinterested generosity test in *Commissioner v. Duberstein*. *Commissioner v. Duberstein*, 363 U.S. 278, 284 (1960). The Supreme Court developed the detached and disinterested test to determine whether a donor's payment to a donee constituted

property as a gift rather than compensation for services, the taxpayer in *Duberstein* attempted to exclude from the taxpayer's gross income under section 102 the value of the property that an individual gave the taxpayer as compensation for services.[93] Under section 61 of the Code, gross income includes compensation for services.[94] Under section 102, however, taxpayers may exclude from gross income amounts received as gifts.[95] Courts have observed that, because taxpayers may exclude gifts from gross income, taxpayers have an incentive to categorize compensation for services as gifts.[96] Therefore, courts narrowly have construed the term "gift" under section 102.[97] To ensure that courts narrowly construe "gift" under section 102,

---

a gift under § 102 of the Code and not as a test to determine whether a payment to a charity is a deductible charitable contribution under § 170 of the Code. *Id.*

93. *Duberstein*, 363 U.S. at 283-84. Although the donor gave the donee in *Duberstein* an automobile as compensation for the donee's services, the donee attempted to characterize the automobile as a gift. *Id.*

94. *See* I.R.C. § 61(a)(1) (1987) (defining gross income). Gross income includes all income earned as compensation for services. *Id.* "Compensation for services" includes fees, commissions, and fringe benefits. *Id.* "Taxable income" is gross income reduced by any deductions. *See I.R.C.* § 63(a) (1987).

95. *See* I.R.C. § 102(a) (1987) (stating that gross income does not include value of property acquired by gift). Section 102 of the Code permits taxpayers to exclude the value of property acquired by gift, bequest, devise, or inheritance. *Id.* Taxpayers may not exclude, however, the income from property that taxpayers received as a gift, bequest, devise, or inheritance. *Id.*

96. *See* Revenue v. LoBue, 351 U.S. 243, 246 (1956) (noting that taxpayers have incentive to characterize all receipts as gifts); Robertson v. United States, 343 U.S. 711, 714 (1952) (stating that, because taxpayers have incentive to characterize compensation as gifts, courts should permit taxpayers to exclude as "gifts" under § 102 only property that donor gave to taxpayer with detached and disinterested generosity); Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146, 149 (1st Cir.) (stating that courts carefully should guard against possibility that taxpayers might disguise compensation for services as gifts), *cert. denied* 389 U.S. 976 (1967); *Haak v. United States*, 451 F. Supp. 1087, 1090 (W.D. Mich. 1978) (discussing need to determine whether taxpayer characterized compensation for services as gift).

97. *See* Commissioner v. Jacobson, 336 U.S. 28, 49 (1949) (suggesting that courts very narrowly construe "gift" under § 102 of Code); Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146, 149 (1st Cir.) (stating that compelling reasons exist for carefully assessing possibility for taxpayers' disguise of compensation for services as "gifts"), *cert. denied* 389 U.S. 976 (1967); Haak v. United States, 451 F. Supp. 1087, 1090 (W.D. Mich. 1978) (discussing need to determine whether taxpayer characterized compensation for services as gift); *see also supra* note 96 and accompanying text (discussing incentive for taxpayers to classify compensation for services as gifts). In *Commissioner v. Jacobson* the United States Supreme Court noted that, because taxpayers may exclude gifts from taxable income, courts narrowly should construe "gift" under § 102 to diminish a taxpayer's incentive to characterize compensation for services as deductible gifts. *Jacobson*, 336 U.S. at 49. Although courts, Congress, and the Service permit taxpayers to take deductions for gifts under § 102, Congress did not enact the gift exclusion to encourage donors to make gifts to donees. *See* Colliton, *supra* note 9, at 999 (discussing rationale for narrow construction of "gift" under § 102). Because the government does not benefit from the gift exclusion under § 102, but does benefit from the charitable contribution deduction under § 170, courts broadly should construe contribution under § 170 to encourage taxpayers to make charitable contributions. *Id.*; *see supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction under § 170).

the Supreme Court in *Duberstein* developed the detached and disinterested generosity test under which a payment constitutes a gift under section 102 if the donor intended to give the donee a gift rather than compensation.[98] In *Duberstein*, the Supreme Court noted that the relationship between the donor and the donee is indicative of whether the donor intended a payment as a gift.[99] The detached and disinterested generosity test may appear circular because a court determines under the test that a transfer of property is a gift if the donor intended the donation as a gift.[100] The Supreme Court believed, however, that by applying the detached and disinterested generosity test under section 102, courts rarely would permit a taxpayer to exclude from taxable income payments characterized as gifts under section 102 because of the taxpayer's difficulty in proving that the donor had the intent to make a gift.[101] Thus, the Supreme Court's rationale for developing the detached and disinterested generosity test reveals the Court's desire to restrict the meaning of the term "gift" under section 102.[102]

Although courts restrictively should apply the term "gift" under section 102, neither Congress nor the United States Supreme Court has advocated a similarly narrow construction of the term "contribution" under section 170.[103] Congress enacted the section 170 charitable contribution deduction

---

98. *See* Commissioner v. Duberstein, 363 U.S. 278, 289 (1960). In *Commissioner v. Jacobson* the United States Supreme Court suggested that courts narrowly construe "gift" under § 102 of the Code because taxpayers often characterize compensation for services as deductible gifts. Commissioner v. Jacobson, 336 U.S. 28, 49 (1949). The Supreme Court has stressed the importance of scrutinizing the motives of the transferor to prevent the donee from disguising compensation for services rendered as gifts. Robertson v. United States, 343 U.S. 711, 716 (1952). The Supreme Court developed the detached and disinterested generosity test to examine the intent of a donor in transferring property to a donee. *Duberstein*, 363 U.S. at 290.

99. *Duberstein*, 363 U.S. at 287-89. In *Commissioner v. Duberstein* the United States Supreme Court stated that the relationship between the donor and donee indicates whether the donor intended the transfer of property as a gift under § 102. *Id.* The Supreme Court suggested, for example, that employers are less likely to transfer gifts to employees than a father is to his son. *Id.*

100. *See Duberstein*, 363 U.S. at 289 (1960) (suggesting circularity of detached and disinterested generosity test). Under the detached and disinterested generosity test, a taxpayer's payment is a charitable contribution if the taxpayer proves that he intended to contribute to a charity by making a payment to the charity. *Id.*

101. *See Duberstein*, 363 U.S. at 289 (1960) (suggesting that requirements of detached and disinterested generosity test are difficult to satisfy because taxpayer must prove intent to make contribution to charity).

102. *See supra* note 98 and accompanying text (discussing United States Supreme Court's rationale for developing detached and disinterested generosity test to assess whether transfers of property constitute gifts under § 102 of Code).

103. *See* Helvering v. Bliss, 293 U.S. 144, 151 (1934) (noting that courts should construe charitable deduction provision in taxpayer's favor because Congress enacted § 170 primarily to stimulate taxpayers to contribute to charities). In determining whether voluntary or mandatory payments constitute deductible charitable contributions under § 170, some courts broadly have construed "contribution" in accordance with Congress' goal in enacting § 170 to increase charitable contributions. *See id.*; Staples v. Commissioner, 821 F.2d 1324, 1326 (8th Cir. 1987)

in an attempt to liberalize the tax law in the taxpayer's favor and promote public policy by giving incentives for private contributions to charitable organizations.[104] In enacting the charitable contribution deduction, Congress emphasized the need for individuals to contribute to charities, not the need for individuals to intend to benefit a charity.[105] The purpose of the deduction was to encourage charitable contributions regardless of individuals' reasons for contributing.[106] Accordingly, courts should not focus on the intention of a contributor in determining whether the contributor's payments to a charity constitute contributions under section 170.[107] Because the detached and disinterested generosity test focuses on the contributor's intent, courts that apply the detached and disinterested generosity test circumvent Congress' purpose in enacting the charitable contribution deduction.[108] Moreover, the Supreme Court developed the detached and disinterested generosity

---

(stating that courts broadly should construe "contribution" under § 170); Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146, 147 (1st Cir.) (suggesting that Congress intended courts to find charity in purposes and works of qualifying organizations and not in intent of contributor by narrowly construing "contribution" under § 170), *cert. denied*, 389 U.S. 976 (1967); Haak v. United States, 451 F. Supp. 1087, 1092 (W.D. Mich. 1978) (stating that courts should not examine intent of contributor because analysis of taxpayer's contributive intent is unreliable). Because Congress' primary goal in enacting the charitable contribution deduction was to stimulate taxpayer's charitable contributions, Congress intended courts broadly to construe "contribution" in the taxpayer's favor. *See* H.R. REP. No. 1860, 75th Cong., 3d Sess. 19 (1938) (stating that Congress' enacted charitable contribution deduction to increase private charitable contributions); *see also See* B. BITTKER, *supra* note 2, at § 19-1 (discussing Congress' purpose of stimulating charitable contributions by enacting charitable contribution deduction); Colliton, *supra* note 9, at 999 (stating that courts broadly should construe "contribution" because Congress enacted charitable contribution deduction to liberalize tax law in taxpayer's favor).

104. *See* Helvering v. Bliss, 293 U.S. 144, 151 (1935) (suggesting that Congress intended courts broadly to construe charitable contribution deduction under § 170 of Code).

105. *See id.*; Staples v. Commissioner, 821 F.2d 1324, 1326 (1987) (noting that, to determine whether payment is charitable contribution, courts should examine benefits that charitable organization received from contribution rather than contributor's motives in contributing); Crosby Valve & Gage Co. v. Commissioner, 380 F.2d 146, 147 (1st Cir.) (stating that Congress intended courts to find charity in purpose and work of qualifying organization and not in taxpayer's intent to contribute), *cert. denied*, 389 U.S. 976 (1967). By focusing on the benefit that a charity received from a contribution rather than the taxpayer's intent to contribute, courts broadly will construe charitable contribution under § 170. *Id.*

106. *See supra* notes 2-4 and accompanying text (discussing Congress' purposes in enacting charitable contribution deduction); *supra* note 103 and accompanying text (discussing Congress' intent that courts broadly construe "contribution" under § 170).

107. *See supra* notes 103-06 and accompanying text (discussing Congress' intent that courts broadly construe "contribution" under § 170); *supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction under § 170).

108. *See supra* note 98 and accompanying text (explaining that United States Supreme Court's rationale in developing detached and disinterested generosity test was to limit taxpayers' ability to take deductions for gifts under § 102); *supra* notes 2-5 and accompanying text (discussing Congress' intent to stimulate charitable contributions by permitting taxpayers to take deductions for charitable contributions); *supra* notes 92-102 and accompanying text (discussing Congress' intent that courts narrowly construe "gift" under § 102 and broadly construe "contribution" under § 170).

test for determining whether a payment is a gift under section 102 and never suggested that courts apply the test to assess whether a payment constitutes a charitable contribution under section 170.[109] Therefore, courts should not construe narrowly the term "contribution" by applying the detached and disinterested generosity test to determine whether a payment constitutes a deductible charitable contribution.[110]

Just as courts should not apply the detached and disinterested generosity test to analyze payments under section 170 of the Code, courts should not apply the *American Bar* market test to determine whether payments that a parishioner made to a church in return for purely religious and spiritual benefits constitute contributions under section 170.[111] In applying the market test, courts have separated into dual payments the voluntary payments that a taxpayer made to a charitable organization.[112] A dual payment is a payment one part of which benefits a charity and the other part of which purchases for the taxpayer a marketable benefit.[113] In the voluntary contribution cases in which courts have applied the market test, courts have permitted a contributor to deduct as a charitable contribution the portion of the payment that exceeds the fair market value of the benefit which the contributor received in return for his payment to the organization.[114] The courts have

---

109. *See supra* notes 98-102 and accompanying text (discussing United States Supreme Court's intent in developing detached and disinterested generosity test).

110. *See supra* notes 98-102 and accompanying text (discussing United States Supreme Court's adoption of detached and disinterested generosity test to determine if payment constitutes gift under § 102 of Code).

111. *See infra* notes 112-17 (suggesting that courts should not apply *American Bar* market test to determine whether payments constitute deductible charitable contributions under § 170).

112. *See, e.g.*, United States v. American Bar Endowment, 447 U.S. 105, 120 (1986) (holding that taxpayer's payment to endowment fund consisted of both charitable contribution and transfer in return for marketable benefit to taxpayer in form of insurance policy); Oppewal v. United States, 468 F.2d 1000, 1006 (1st Cir. 1972) (stating that portion of parents' payment to school for children's education that exceeded value children's education was charitable contribution); Winters v. Commissioner, 468 F.2d 778, 785 (2d Cir. 1972) (holding that parents' payment to parochial school for children's education was charitable contribution to extent that payment exceeded church's cost in providing education to children). Courts that have considered whether voluntary payments are deductible charitable contributions under § 170 have examined the fair market value of the benefit that the charity gave the taxpayer in return for the payment. *See, e.g, Oppewal*, 468 F.2d at 1002 (discussing whether voluntary payments that parents made to school for children's education constituted deductible charitable contributions under § 170); Singer Co. v. United States, 449 F.2d 413, 415 (Cl. Ct. 1971) (considering whether sewing machines that corporation voluntarily sold at discounts to charitable organizations constituted deductible charitable contributions); DeJong v. Commissioner, 309 F.2d 373, 376 (9th Cir. 1962) (assessing whether voluntary payments that parents made to school for children's education constituted deductible charitable contributions); *cf.* Staples v. Commissioner, 821 F.2d 1324, 1328 (8th Cir. 1987) (noting that United States Supreme Court in *American Bar* applied rule that taxpayer may deduct portion of payment to which exceeds fair market value of tangible benefit).

113. *See supra* note 112 and accompanying text (explaining that dual voluntary payment consist of portion that is charitable contribution and portion that taxpayer gave to charity in return for benefit with fair market value).

114. *See American Bar*, 477 U.S. at 120 (stating that charitable contribution is equal to

ascertained the fair market value of a contributor's benefit by comparing the fair market value of a similar benefit offered in the market place with the amount of money that the contributor paid to the organization.[115] Under the market test, if the amount of money that the contributor paid to the organization exceeded the fair market value of the similar benefit, courts have permitted the contributor to take a deduction for the amount of the contributor's payment that exceeded the fair market value of the similar benefit.[116] A court cannot apply properly the market test, however, if the taxpayer does not receive a marketable benefit.[117]

In the Scientology cases, the parishioners did not receive marketable benefits in return for their payments to the church.[118] Rather, the parishioners received purely religious benefits.[119] Although the parishioners did not receive marketable benefits in return for the payments to the church, some of the federal circuit courts have attempted to place upon the parishioners

---

amount exceeding fair market value of benefit charity gave to taxpayer in return for payment); *see also supra* note 112 and accompanying text (discussing courts' application of market test when taxpayer received marketable benefit from charity in return for payment to charity). In *United States v. American Bar Endowment*, the United States Supreme Court calculated the value of the insurance policy that the taxpayer received from the endowment fund in return for his payment to the endowment fund by comparing the amount of the taxpayer's payment with the cost of a comparable insurance policy on the market. *American Bar*, 477 U.S. at 120. The Supreme Court held that the portion of the taxpayer's payment that exceeded the fair market value of the insurance policy was a deductible charitable contribution. *Id.*

115. *See supra* note 112-14 and accompanying text (discussing courts that have held that charitable contributions are payments that exceed fair market value of benefit which charity gave taxpayer in return for taxpayer's payment to charity).

116. *See* United States v. American Bar Endowment, 477 U.S. 105, 120 (1986) (stating that charitable contribution to charity is amount that exceeds fair market value of benefit that charity gave to taxpayer in return for payment); *see also supra* notes 41-45 and accompanying text (discussing United States Supreme Court's application of market test in *United States v. American Bar Endowment*).

117. *See American Bar*, 477 U.S. at 120 (stating that charitable contribution is equal to amount exceeding fair market value of benefit that charity gave to taxpayer in return for payment). In applying the market test, a court examines the market value of the benefit that a charity gave to a taxpayer in return for the taxpayer's payment to the charity. *See id.* If the charity did not give the taxpayer a benefit with a fair market value in return for the taxpayer's payment, courts properly cannot apply the market test. *See id.*

118. *See* Staples v. Commissioner, 821 F.2d 1324, 1327 (8th Cir. 1987). In *Staples v. Commissioner* the United States Court of Appeals for the Eighth Circuit determined that the parishioners of the Church of Scientology received privileges of church membership in return for the parishioner's mandatory payments to the church. *See id.*; *supra* notes 19-32 and accompanying text (discussing facts of Scientology cases). Church membership is not a significant economic benefit that has a monetary, marketable value. *Staples*, 821 F.2d at 1327.; *see* Murphy v. Commissioner, 54 T.C. 249, 253 (1970) (noting that religious benefits do not have monetary values). The sale of a religious benefit does convert the religious benefit into a benefit with a fair market value, nor does the sale render the transfer of the religious benefit in return for a payment a commercial transaction. *See* Murdock v. Pennsylvania, 319 U.S. 105, 111 (1943) (sale of religious literature is not commercial transaction).

119. *See supra* note 118 and accompanying text (noting that church gave parishioners no economic or monetary benefits but did give parishioners rights of belonging to church and participating in religious services).

the burden of proving the value of the religious service.[120] After the parishioners have proved the value of the religious service, courts have required that the parishioners demonstrate the amount of money that the parishioners intended to constitute a charitable contribution, which is the portion of the payment exceeding the fair market value of the religious service.[121] The circuit courts' desire to place a monetary value on religious services, however, violates the Free Exercise Clause of the first amendment to the United States Constitution.[122] The United States Supreme Court has held that, under the Free Exercise Clause, the government may not evaluate the worth of religious services.[123] Moreover, the task of valuing religious services is impossible, because a market place for religious services does not exist.[124] Because courts that attempt to assess the value of religious services violate the Constitution and because of the difficulty of determining the fair market values of religious services, courts should not apply the market test to payments that a parishioner makes to a church in return for religious services.[125]

Additionally, to support Congress' goal of making tax law understandable and clear for taxpayers, courts should refuse to apply the detached and disinterested generosity test and the market test.[126] The detached and

---

120. *See* Hernandez v. Commissioner, 819 F.2d 1212, 1218 (1st Cir. 1987) (holding that parishioner failed to prove that payment exceeded fair market value of religious benefits that church gave parishioner in return for parishioner's payments); Miller v. Commissioner 829 F.2d 500, 504 (4th Cir. 1987) (noting that parishioner did not prove that mandatory payments exceeded cost of religious services which church provided in return for parishioner's payments).

121. *See supra* note 120 and accompanying text (noting that parishioner has burden to prove that parishioner's payment to charity exceeded fair market value of benefit that charity gave to parishioner in return for payment).

122. *See* Walz v. Commissioner, 397 U.S. 664, 674 (1970) (holding that government may not assess value of church programs under Free Exercise Clause of United States Constitution); *see also* U.S. CONST. amend. I (stating that Congress shall make no law which establishes religion or prohibits citizens' free exercise of religion).

123. *See Walz*, 397 U.S. at 674 (1970) (stating that government may not assess value of church programs under Free Exercise Clause of United States Constitution).

124. *See* Staples v. Commissioner, 821 F.2d 1324, 1327 (8th Cir. 1987) (refusing to apply *American Bar* market test because of inherently charitable nature of payment for religious participation and incongruity in attempting to place fair market value on religious participation that does not have fair market value).

125. *See supra* notes 111-17 and accompanying text (discussing *American Bar* market test as inapt to assess whether parishioners' payments to church in return for religious participation constitute contributions under § 170).

126. *See* Treasury Report on Tax Simplification and Reform (Report to the President, Nov. 27 1984) (stating that Congress should simplify income tax code and regulations for taxpayers); J. FREELAND, S. LIND & R. STEPHENS, FUNDAMENTALS OF FEDERAL INCOME TAXATION 22-28 (1985) (discussing taxpayers' need for clear income tax regulations and government's need for taxpayers to understand income tax regulations); Colliton, *supra* note 9, at 1002 (stating that taxpayers have right to clear standards for determining deductions, while Service and courts need clear standards for deciding controversies); *infra* notes 127-34 and accompanying text (suggesting that courts should not apply detached and disinterested test or *American Bar* market test to determine whether mandatory payments constitute contributions under §

disinterested generosity test gives no clear guidance to taxpayers in planning charitable payments because the test requires an arduous analysis of the taxpayers' motives in making the contribution.[127] The market test also does not provide a clear standard because the test places an unreasonable burden of proof on a taxpayer who receives religious benefits in return for contributing to a church.[128] By applying the detached and disinterested generosity test and the market test to determine whether contributions are charitable, a court would impose on a parishioner the burden of demonstrating the value of the benefit that the parishioner received in return for the parishioner's payment to the church, and the portion of the parishioner's payment that the parishioner intended to constitute a charitable contribution.[129] If a court imposes on a parishioner the heavy burden of proving the parishioner's intent in contributing to a church for the parishioner to take a deduction for a charitable contribution, the court will discourage parishioners from contributing to churches.[130] Thus, applying the detached and disinterested generosity test or the market test to determine whether a payment constitutes a charitable contribution frustrates Congress' purpose in enacting the charitable contribution deduction to encourage individuals to make charitable contributions.[131]

---

170 of Code). Without clear standards for determining deductions, taxpayers will have little motivation to pay income tax. *See* J. FREELAND, S. LIND & R. STEPHENS, *supra*, at 22, 28. The United States tax system's collection of income tax depends on the willingness of taxpayers voluntarily to pay income taxes. *See id.* at 28. Because the tax system relies on taxpayers' motivation to pay taxes, Congress should make taxes fair and should provide clear income tax guidelines for taxpayers. *See id.*

127. *See* Commissioner v. Duberstein, 363 U.S. 278, 283-84 (1960) (developing detached and disinterested generosity test to assess whether taxpayer may exclude property received as gift under § 102); *supra* notes 91-102 and accompanying text (discussing United States Supreme Court's development and application of detached and disinterested generosity test to determine whether donor's payment constituted gift under § 102).

128. *See supra* notes 111-25 and accompanying text (discussing difficulty in applying market test to determine whether mandatory payments to charitable organization constitute deductible charitable contributions). The market test requires a parishioner to demonstrate the portion of the payment that exceeds the cost of the benefit which the parishioner received from a church before the parishioner may take a deduction for the portion of the payment. *See id.*

129. *See supra* notes 126-28 and accompanying text (stating that detached and disinterested generosity test and market test are difficult to apply and do not provide taxpayers and courts with clear standard for determining whether mandatory payments are charitable deductions under § 170).

130. *See supra* notes 126-29 and accompanying text (suggesting that difficulty in applying detached and disinterested generosity test and market test would lead to taxpayers' discontent with tax system and decreases in charitable contributions).

131. *See supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction); *supra* notes 103-30 and accompanying text (suggesting that detached and disinterested generosity test and market test are difficult to apply and provide unclear standards for taxpayers in claiming deductions and for courts deciding disputes). Because unclear standards and inconsistent court decisions will decrease taxpayers' motivation voluntarily to pay income taxes and likelihood of making charitable contributions, the detached

Instead of mistakenly focusing on a contributor's intent under the detached and disinterested generosity test or on the fair market value of the religious services under the market test, courts should apply the test that the Eighth Circuit adopted in *Staples*.[132] Under the Eighth Circuit's commensurate benefit test, a taxpayer may take deductions for charitable contributions as long as the benefit that the charity receives from the contribution is greater in value than the benefit that the parishioner receives from the charity in return for the contribution.[133] The commensurate benefit test does not force a court to analyze a taxpayer's motives in making a contribution and thus is a much clearer standard than the detached and disinterested generosity test for determining whether payments are charitable contributions .[134] Additionally, because a taxpayer's intent is irrelevant under the commensurate benefit test, the taxpayer will not have the impossible burden of proving his intent to make a charitable contribution.[135] Thus, by

---

and disinterested generosity test and market test will circumvent Congress' goals in enacting the charitable contribution deduction to stimulate charitable contributions. *See supra* notes 126-30 and accompanying text (stating that detached and disinterested generosity test and market test are difficult to apply and provide unclear standards for taxpayers in claiming deductions); *see also supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction).

132. *See* Staples v. Commissioner, 821 F.2d 1324, 1326 (8th Cir. 1987) (stating that charitable contribution is transfer of money or property to charity without receiving benefit from charity equal in value to payment (commensurate benefit test)); *supra* notes 71-82 and accompanying text (discussing application of commensurate benefit test by Eighth Circuit in *Staples* to determine whether mandatory payment constituted deductible charitable contributions); *infra* notes 133-38 and accompanying text (discussing rationale for court's application of commensurate benefit test to assess whether mandatory payments were deductible charitable contributions).

133. *See Staples*, 821 F.2d at 1326 (describing commensurate benefit test).

134. *See id.* (noting difficulty in attempting to ascertain fair market value of religious services or parishioner's intent in making payment to church); *supra* notes 103-30 (discussing difficulty and ambiguity in applying detached and disinterested generosity test and market test to determine whether payments are deductible charitable contributions). The commensurate benefit test requires courts to compare the benefits that a charity receives from a taxpayer's payment with the benefit that the charity gives to the taxpayer in return for the taxpayer's contribution. *Staples*, 821 F.2d at 1326. Although the commensurate benefit test entails examining benefits, the test does not require courts to delve into the mind of the contributor which the detached and disinterested generosity test requires of courts. *Id.* Under the commensurate benefit test, courts do not have to assess the fair market value of religious benefits nor do taxpayers have to prove that the value of their payments that exceeds the fair market value of religious participation in the church. *Id.*

135. *See Staples*, 821 F.2d at 1326 (describing commensurate benefit test); *see also supra* notes 98-101 and accompanying text (stating that donee must prove that donor intended to make gift to donee). When applying the detached and disinterested generosity test under § 170, courts have required taxpayers to prove that they intended to contribute to a charity. *See* Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (noting that, under detached and disinterested generosity test, contributions are charitable if contributors intended to contribute to charity); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (requiring taxpayers to demonstrate taxpayers' motives in making payments to charity); Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (requiring parishioner to prove that he intended to contribute to church).

adopting the commensurate benefit test rather than the detached and disinterested generosity test or the market test, courts broadly may construe the term "contribution" under section 170 and permit more taxpayers to take deductions for charitable contributions.[136] Because the commensurate benefit test enables courts broadly to apply the charitable contribution deduction, courts applying the test promote Congress' goals in enacting the charitable contribution deduction, which include promoting private support of charitable organizations and freeing the government from subsidizing charitable organizations.[137] In addition, the commensurate benefit test furnishes courts and taxpayers with a clear standard for determining whether a payment constitutes a contribution under section 170.[138]

Under the commensurate benefit test, the parishioners in the Scientology cases did not receive a commensurate benefit in return for their contributions to the Church of Scientology.[139] Accordingly, the parishioners were entitled to take a deduction for their payments to the church.[140] Under the commensurate benefit test, if the amount of the payments that the parishioners made to the church exceeded the value of the religious benefits that the parishioners received from the church, the entire amount of the parishioners' payments constituted charitable contributions.[141] In all of the Scientology cases, although the contributions of church members were the only means of financial support for the church, the church had developed a large,

---

136. *See supra* note 134 and accompanying text (stating that commensurate benefit test does not require taxpayer to prove taxpayer's motive in making contribution). Under the commensurate benefit test, courts do not inquire into the motive of a contributor. *Id.* Because a taxpayer's motive in contributing are irrelevant under the commensurate benefit test, courts more frequently will permit a taxpayer to take a deduction for a charitable contribution than under the detached and disinterested generosity test. *Id.* The more that courts permit a taxpayer to take a deduction for charitable contributions, the more likely a taxpayer will make charitable contributions. *Id.*; *see supra* notes 2-5 and accompanying text (discussing Congress' goals in allowing taxpayers to take deductions for charitable contributions).

137. *See supra* notes 103-10 and accompanying text (arguing that courts broadly should interpret "contribution" under § 170); *supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction).

138. *See supra* notes 132-38 and accompanying text (suggesting that courts should apply commensurate benefit test in determining whether payments to charities constitute deductible charitable contributions under § 170).

139. Staples v. Commissioner, 821 F.2d 1324, 1327 (8th Cir. 1987); *see infra* notes 140-45 and accompanying text (stating that parishioners did not receive commensurate benefit for payments that parishioners made to church).

140. *Staples*, 821 F.2d at 1327 (8th Cir. 1987).

141. *See Staples*, 821 F.2d at 1326 (describing commensurate benefit test). Under the commensurate benefit test, a court determines whether a contributor's payment to a charity is equal in value to the cost of the benefit that the charity gave to the contributor in return for the payment to the charity. *See id.* If the contributor's payment is commensurate in value with the benefit that the charity gave to the contributor, then the contributor's payment is not a deductible charitable contribution. *See id.* The commensurate benefit test supports Congress' goals in enacting the charitable contribution deduction to ensure that charities benefit more from contributions than does the contributor. *See supra* notes 2-5 and accompanying text (discussing Congress' goals in enacting charitable contribution deduction).

financial surplus of funds.[142] The church's large financial pool suggests that the value of the benefit that the church received from the parishioners' payments exceeded the expense that the church incurred in providing religious services to the parishioners. Conversely, the church's large financial surplus suggests that the value of the parishioners' payments to the church exceeded the value of the benefit that the parishioners received in return for their payments to the church. Therefore, under the commensurate benefit test, the parishioners' payments constituted charitable contributions under section 170 of the Code.[143]

In addition to permitting deductions under the commensurate benefit test for the parishioners' payments to the church, courts should hold, in accordance with other Service rulings, that the parishioners' mandatory payments to the church constitute charitable contributions.[144] Some of the circuit courts in the Scientology cases have maintained that the mandatory structure of the payments is evidence of a parishioner's intent not to make a contribution and of a commercial transaction between the church and the parishioner.[145] In deciding whether mandatory payments that parishioners make to a church in return for the right to participate in religious activities are deductions, however, courts should consider other types of mandatory payments that the Service views as deductible.[146] For example, members of the Mormon Church may deduct payments made for tithing, which is a prerequisite to receiving admission to the church.[147] Also, members of the Jewish faith may deduct fixed dues that the members pay for seats in a synagogue during High Holy days.[148] Finally, the Service has ruled that the

---

142. *See* Brief for Appellant at 4, Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987) (No. 86-2090) (stating that Church of Scientology had developed large financial account resulting from parishioner's mandatory payments).

143. *See supra* note 139-44 and accompanying text (suggesting that, because church's benefits exceeded parishioners' benefits from making payments to church, parishioners' payments constitute charitable contributions under commensurate benefit test).

144. *See infra* notes 145-51 and accompanying text (discussing parishioners' mandatory payments to churches other than to Church of Scientology that Service has considered deductible under § 170).

145. *See* Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987) (focusing on church's establishment of fixed donations in determining whether parishioner's payments to Church of Scientology constituted deductible charitable contributions); Graham v. Commissioner, 822 F.2d 844, 846 (9th Cir. 1987) (stating that Church of Scientology's mandatory payment structure and not type or amount of benefit that church or parishioners received controls whether parishioners' payments constitute deductible charitable contributions); Miller v. Commissioner, 829 F.2d 500, 501 (4th Cir. 1987) (noting that structure of transaction between Church of Scientology and parishioner evidences motives of parishioner in making payment to church).

146. *See infra* notes 147-59 and accompanying text (discussing examples of mandatory payment that are deductible charitable contributions under § 170).

147. *See* Brief for Appellant at 17, 23, Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987) (No. 86-2090) (noting that tithing by members of Church of Jesus Christ of Latter-day Saints are deductible charitable contributions).

148. *See* Lobsenz v. Commissioner, 17 B.T.A. 81, 82 (1929) (allowing synagogue member

payments for pew rentals are deductible as charitable contributions.[149] Courts cannot logically distinguish the mandatory payments that the parishioners made to the Church of Scientology from the pew rentals or the fixed dues for the right of admission to a temple that members of other religions pay.[150] Accordingly, courts should permit parishioners to take deductions under section 170 for the mandatory payments that the parishioners make to the Church of Scientology.[151]

Courts have had difficulty in determining whether mandatory charitable payments are deductible under section 170.[152] The difficulty has resulted from the paucity of congressional guidance for courts to follow in determining whether a payment constitutes a contribution under section 170.[153] The parishioners in two, and the Service in one, of the Scientology cases have petitioned the United States Supreme Court to grant rehearings.[154] Thus, the Supreme Court has the opportunity to adopt a test for determining whether a mandatory contribution constitutes a deductible charitable contribution and to end the confusion and difficulty that the federal circuit courts have experienced in deciding this question.[155] Until the Supreme Court adopts a test for evaluating whether a mandatory payment constitutes a deductible contribution, courts should adopt the commensurate benefit test

---

to deduct pew rentals for holy days); Brief for Appellant at 19, Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987) (No. 86-2090) (stating that Service and Courts uniformly have accepted as deductible charitable contributions payments that synagogue members made to purchase tickets for seats in synagogue during Jewish High Holy Days).

149. *See* Rev. Rul. 70-47, 1970-1 C.B. 49 (stating that pew rents, church dues, and building assessments are deductible charitable contributions).

150. *See supra* notes 147-49 and accompanying text (discussing mandatory fees that are deductible under charitable contribution deduction). Deductible mandatory payments that members of other churches pay are similar in structure to the mandatory payments that members of the Church of Scientology pay. *See id.* Therefore, courts and the Service should rule that mandatory payments which members make to the Church of Scientology are deductible charitable contributions in accordance with the Service's ruling that similar mandatory payments are deductible under § 170. *See id.*

151. *See supra* notes 144-50 and accompanying text (stating that courts should permit parishioners' to take deductions for mandatory payments to Church of Scientology because similar mandatory payments that parishioners of other religions make to churches are deductible).

152. *See supra* note 83 and accompanying text (discussing federal circuit courts' difficulty in applying tests to determine whether parishioners' mandatory payments constituted deductible charitable contributions under § 170).

153. *See supra* notes 13-15 and accompanying text (discussing lack of congressional guidance for assessing whether payments constitute contributions under § 170).

154. Hernandez v. Commissioner, 819 F.2d 1212 (1st Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3523 (U.S. Dec. 11, 1987)(No. 87-963); Commissioner v. Staples, 821 F.2d 1324 (8th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3634 (U.S. Feb. 19, 1988)(No. 87-1382); Miller v. Commissioner, 829 F.2d 500 (4th Cir. 1987), *petition for cert. filed*, 56 U.S.L.W. 3627 (U.S. March 1, 1988)(No. 87-1449).

155. *See supra* note 154 and accompanying text (noting that parishioners in two and Service in one of Scientology cases have asked United States Supreme Court for rehearings).

to determine whether a mandatory payment to a charity is deductible.[156] Additionally, for consistency with the Service's rulings permitting members of other charitable organizations to deduct mandatory fees, courts should permit a contributor to deduct mandatory payments that the contributor makes to religious organizations.[157] Finally, by applying the commensurate benefit test to determine the deductibility of mandatory payments to religious organizations, courts will aid in making the tax rules consistent and clear for taxpayers, encourage individuals to contribute funds to charitable organizations, and avoid the impossible task of placing a monetary value on religious services.[158]

VINCENT J. X. HEDRICK, II

156. *See supra* notes 132-38 and accompanying text (arguing that courts should apply commensurate benefit test to assess whether payments constitute charitable contributions under § 170).

157. *See supra* notes 144-51 and accompanying text (suggesting that courts should permit parishioners to take deductions for mandatory payments in accordance with other mandatory payments that are deductible under § 170).

158. *See supra* notes 132-38 and accompanying text (suggesting that commensurate benefit test provides courts with clear standard for determining whether payments are charitable contributions under § 170); *supra* notes 103-10 and accompanying text (discussing difficulty in applying detached and disinterested generosity test to determine whether payments are deductible charitable contributions under § 170); *supra* notes 111-17 and accompanying text (discussing difficulty in applying market test to assess whether mandatory payments that parishioners gave to church in return for religious participation constitute charitable contributions under § 170).