GoFundMe: The Gift That Keeps on Giving, All Tax Season Long

by Bailey Hans

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In this article, Hans examines the tax consequences of donations made through crowdfunding platforms, focusing on the *Duberstein* standard and tax policy principles, and she explores ways to provide certainty to donors and donees in the absence of administrative or congressional tax guidance.

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In September 2016 Army Sgt. Charles Edward Gaytan Jr. created a GoFundMe page[1] for his wife, Kayla, and their children. In 255 words, he described the challenging year they were experiencing and ended by asking for people to provide any help that they could. He explained that the couple married in January 2016, blissfully unaware of what the year had in store. Only one week later, Kayla was diagnosed with Hodgkin's lymphoma. She received chemotherapy treatments every other week, and in May was in remission. However, the couple was told that having a child was extremely unlikely. In June, one month after completing her chemotherapy, Kayla became naturally pregnant with quadruplets. At 28 weeks into her pregnancy, Kayla's Hodgkin's lymphoma returned, and she needed to begin treatment immediately. This led the couple to make the difficult decision to deliver the babies at 30 weeks through cesarean section. All four children survived and were admitted into the neonatal intensive care unit. While this medical miracle left the couple feeling eternally grateful, their hospital bills were accruing rapidly. The babies had to spend months in the hospital, and Kayla's treatment was just beginning again.

As of this writing, Kayla is in remission again, and all four children are happy and healthy. The GoFundMe page that Gaytan created ultimately raised $1,167,460, which is the largest donation to a single family in GoFundMe history. Approximately 17,300 people donated to the family. Most of the donations were under $100, and the largest was $8,000. Many of the donations were anonymous, in the amount of $25. This pattern is emblematic of many GoFundMe pages; people hear about a touching story and want to give anything they can, even if it's only a small amount. But these stories quickly reach millions of online users, and every small donation makes a difference to the overall amount. This GoFundMe money allowed the Gaytans relief from the medical bills that would have otherwise clouded the birth of their babies and Kayla's remission. This money was exceptionally helpful to the

[1] Launched May 10, 2010, GoFundMe is a for-profit crowdfunding platform that allows people to raise money for essentially any reason. People primarily use it to raise money for life events, such as the cost of expensive healthcare and celebrations. For personal campaigns in Australia, Canada, France, Germany, Ireland, Italy, the Netherlands, Spain, the United Kingdom, and the United States, the use of GoFundMe is free for those seeking funding. However, GoFundMe does collect a payment processing fee of 2.9 percent and 30 cents per donation. It also offers services for charities for fundraising. With charities, GoFundMe takes a 7.9 percent fee and the same 30 cents per donation. *See* Chloe Green, "GoFundMe Introduces a 0% Platform Fee for Personal Campaigns," Charity Digital (Jan. 17, 2018).

family because none of it was subject to income tax.

Under relevant income tax laws, every donation made to the Gaytans' GoFundMe page was considered a gift and thus was not subject to tax. Other than the percentage that GoFundMe takes and the credit card processing fees, the Gaytans received every cent that donors provided.

This report examines the tax ramifications for both donors and recipients through sites like GoFundMe, probing the following question: Is it an optimal result that people like the Gaytans receive more than $1 million tax free?

When people win the lottery, they are still required to pay taxes. When a GoFundMe cause really takes off, like the Gaytans' did, it is similar to winning the lottery, yet the funds are tax free. What makes the funds raised on GoFundMe unique? Are all transfers made on GoFundMe considered gifts? If some transfers through crowdfunding are not in fact gifts, what, if anything, should the IRS or crowdfunding platforms do about it? In this report, I explain what makes GoFundMe different from other ways of acquiring money. I then pose issues presented by transactions that do not count as gifts. Ultimately, I argue that although there is a potential for donations that do not qualify as gifts to escape taxation under section 102, the feasible solutions for the IRS to capture these tax payments are not worth the costs of implementing them.

I. Background

A. The Evolution of Crowdfunding

Crowdfunding emerged in the wake of the internet explosion, revolutionizing the reach and extent of individuals' potential to contribute to others. Websites like GoFundMe allow people from anywhere in the world to contribute to causes that tug at their heartstrings from the comfort of their living room couches. Brian Camelio, a Boston musician and computer programmer, invented the first notable crowdfunding platform, ArtistShare, in 2003. It began as a website where fans could donate to their favorite musicians to help them produce digital recordings, but it rapidly evolved into a platform for film, video, and photography projects as well.[2]

ArtistShare's first crowdfunding project, Maria Schneider's jazz album "Concert in a Garden," was an immense success. It raised $130,000, which allowed her to compose and produce her music, pay her musicians, rent a large recording studio, and market the album. Schneider offered a rewards-based crowdfunding opportunity; in proportion to the amount each contributor gave, Schneider gave them something in return. For a $9.95 contribution, a donor got to be among the first customers to download the album upon its release in 2004. Fans who contributed $250 or more were listed in the booklet that accompanied the album as participants who "helped to make this recording possible" and received a free download of the album. One fan who contributed $10,000 was listed as an executive producer in the credits of the album.[3] Schneider's album was sold exclusively through the ArtistShare website and was such a success that it won a Grammy for best large jazz ensemble album in 2004.[4]

After the success of ArtistShare, more crowdfunding platforms were created using the rewards-based model. The most successful and well-known early platforms are Indiegogo[5] and

[2]David M. Freedman and Matthew R. Nutting, "A Brief History of Crowdfunding: Including Rewards, Donation, Debt, and Equity Platforms in the USA," Freedman-Chicago.com (Nov. 5, 2015).

[3]*Id.*

[4]Recording Academy, "2004 GRAMMY Winners," Grammy.com (2004).

[5]Indiegogo launched in January 2008 and is still active as a crowdfunding site. It provides a platform for people soliciting funds for an idea, charity, or start-up business. It charges a 5 percent fee on contributions, in addition to a Stripe credit card processing fee of 2.9 percent and 30 cents per transaction. In 2014 it launched Indiegogo Life, which functioned more like GoFundMe, allowing people to raise money for emergencies, medical expenses, celebrations, and other life events. In 2015 Indiegogo Life was renamed Generosity.com, and in 2018 YouCaring, another crowdfunding site, bought Generosity.com. Later in 2018, YouCaring was acquired by GoFundMe. *See* Indiegogo, "Pricing & Fees"; Ingrid Lunden, "YouCaring Acquires Generosity.com as Indiegogo Pulls Out of Personal Causes Fundraising," *TechCrunch*, Jan. 25, 2018; and GoFundMe, "GoFundMe Acquires YouCaring" (Apr. 4, 2018).

Kickstarter.[6] Although Indiegogo was eventually acquired by GoFundMe, Kickstarter remains independent and profitable. Unlike Indiegogo and GoFundMe, Kickstarter's main function is providing capital to inventors and entrepreneurs, not raising funds for charitable purposes.

GoFundMe is a for-profit business, but its sole mission is to "help people fundraise for personal, business, and charitable causes"; the emphasis is entirely on benefiting the donee.[7] The GoFundMe website explains that crowdfunding "harnesses the power of social networks and the internet to give people the means to raise funds, help others overcome hardship, and meet aspirational goals. . . . You can do everything from pay for your own surgery to fulfill a student's dream of attending college — and so much more."[8] The structure of GoFundMe's business aligns with the notion of considering effects on society; its profit margins rely solely on people's generosity. But this raises the question of whether people are choosing to donate to GoFundMe pages truly out of the kindness of their hearts or instead are seeking more symbiotic transactions. At first glance, it may seem like a donor's motivations are irrelevant — as long as people are benefiting from donations, who cares? However, the IRS would seemingly care significantly that Kayla Gaytan's $1,167,460 was not includable in her taxable income because it was received in the form of many gifts.

B. What Is a Gift?

1. For income tax purposes.

Gifts are excludable from gross income.[9] Section 102(a) states that "gross income does not include the value of property acquired by gift, bequest, devise, or inheritance."[10] To determine, for income tax purposes, whether a transaction is a gift, taxpayers must look to the legal standard established in *Duberstein*.[11]

Mose Duberstein, the president of Duberstein Iron & Metal Co., received a notice of deficiency when he failed to include in his gross income a Cadillac that he received from Morris Berman, the president of Mohawk Metal Corp. Over the course of years of doing business together, Berman often asked Duberstein if he knew of anyone who would be interested in purchasing Mohawk's products. One time Duberstein provided a few names of potential clients for Berman, which proved to be so valuable for Mohawk that Berman thanked Duberstein by providing him with a Cadillac. The Supreme Court held that the Cadillac was not a gift because it was made out of anticipation of future benefits and payment for past services.

Although the Court did not create a bright-line rule, *Duberstein* provides the guidance that if a transfer is made from a sense of obligation or in exchange for services, it is not a gift. For a transfer to be considered a gift for income tax purposes, the transferor must lack any ulterior motive or desire to retain a benefit. Simply put, the transfer must be made from a "detached and disinterested generosity."[12]

Determining if a transfer is a gift is challenging predominantly because the relevant inquiry looks to the transferor's intent and is fact-intensive. In *Duberstein*, the Court rejected making a blanket test that would allow only transfers made in a personal context, as opposed to a business context, to qualify as gifts. The Court explained that while true gifts are rare in business contexts, a personal context test would be too broad to serve as a universal rule of law. Instead, courts must look at the particular facts of any given case to determine whether a gift has been made.

When analyzing whether funds given were gifts, a court needs to individually engage in a fact-intensive inquiry. Trial courts must examine

[6] Kickstarter was launched on April 28, 2009. It has retained the rewards-based model and continues to offer those who back projects on Kickstarter tangible rewards or experiences in exchange for their pledges. Examples of rewards include written notes of thanks, custom T-shirts, and handmade objects. *See* Kickstarter.com, "About"; Jack Markell, "A New Kind of Corporation to Harness the Power of Private Enterprise for Public Benefit," *HuffPost*, Sept. 21, 2013; and Rob Walker, "The Trivialities and Transcendence of Kickstarter," *The New York Times*, Aug. 5, 2011.

[7] GoFundMe, "About GoFundMe."

[8] GoFundMe, "What Is Crowdfunding? The Clear and Simple Answer."

[9] My analysis focuses on the term "gift" in the income tax context for purposes of the donee's tax consequences.

[10] Section 102(a).

[11] *Commissioner v. Duberstein*, 363 U.S. 278 (1960).

[12] *Id.*

the nature of the relationship between the parties, the reasons behind the giving of the gift, and the intent of the gift giver.[13] In *Stanton*,[14] the companion case to *Duberstein*, the Supreme Court considered the findings of fact, as determined by the district court, inadequate. That case was remanded and decided only after more detailed findings of fact were established.

Although the Court in *Duberstein* refused to establish a blanket test for determining whether a payment or transfer of property constitutes a gift, it did provide the following language:

> A gift in the statutory sense . . . proceeds from a "detached and disinterested generosity," "out of affection, respect, admiration, charity or like impulses." And in this regard, the most critical consideration . . . is the transferor's "intention."[15]

Surrounding circumstances can inform the transferor's intent and help courts determine whether a donative intent existed.[16] The *Duberstein* Court noted that "the donor's characterization of his action is not determinative," but it is a factor that courts can consider when examining all the facts as a whole.[17] This means that fact finders must look beyond the donor's own characterization of the transaction to all the surrounding circumstances to see what the true intent is.[18]

In the wake of *Duberstein*, lower courts have used the Supreme Court's words as criteria when resolving the factual controversy of whether a gift was made. In *Duncan*,[19] the Tax Court said that this inquiry "focuses upon objective indicia of the transferor's intent from the whole evidentiary record and does not merely rely on the transferor's own statements." It considered the donor's characterization of the tax treatment and the quid pro quo reason behind the payment to be the most important factors, noting:

> In *Duberstein* (and subsequent cases) the existence of a personal relationship between the donor and donee, the lack of moral or legal obligation on the donor to make a payment, and the donor's tax treatment of the payment, each standing alone, were all deemed irrelevant or subordinate consideration. Instead, the characterization of a transfer depends on the fact-finder's perception in light of all the evidence.[20]

The taxpayer in that case was Dann Lee Duncan, an attorney who received a $30,000 check from Keith Walker, a client he represented in a 14-year-long lawsuit. Walker was awarded a lump sum payment of more than $360,000, yet Duncan's flat fee was only $2,500. Walker claimed that he gave Duncan the $30,000 out of a disinterested generosity resulting from a personal relationship. The government argued that Walker's deduction of the payment as a legal expense on his own federal tax return better demonstrated his intent — that of payment, not a gift.

The court held that Walker gave the $30,000 to Duncan primarily out of gratitude for Duncan's services in representing him and bringing the lawsuit to a successful conclusion after 14 years. It found most persuasive as clear indications that Walker was not making a gift the facts that (1) he would not have given Duncan the $30,000 but for his receipt of the large lump sum payment from the lawsuit, and (2) he deducted the $30,000 on his federal income tax return. The court noted that the facts closely resembled those in *Duberstein*: Even though Duncan, like Duberstein, did not solicit the payment, Walker, like Berman, intended it as

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[13] *Bogardus v. Commissioner*, 302 U.S. 34, 41 (1937).

[14] *Stanton v. United States*, 186 F. Supp. 393 (E.D.N.Y. 1960). *Stanton*, as a companion case to *Duberstein*, was decided by the Supreme Court at the same time. I note it here to highlight the importance of the trial court's role in the fact-finding aspect of this inquiry.

[15] *Duberstein*, 363 U.S. at 285 (citations omitted).

[16] The *Duberstein* Court chose to focus on the transferor's intent over his motive. The taxpayer's brief in *Duberstein* highlights that the definition of gift should be tied to intent rather than motive because motive inherently involves emotion: "If one man hated another so much that he decided to give him $100,000, knowing that he would drink himself to death, there would nevertheless be a gift. . . . The motive would be one of hate. The same $100,000 gift could be made by one friend or another and the motive would be for love of friendship." This example is helpful to illuminate what kind of facts courts should consider when looking into a person's intent. *See* Brief for the Respondents on Writ of Certiorari at 10, *Duberstein*, 363 U.S. 278 (1960) (as quoted in Walter J. Blum, "Motive, Intent and Purpose in Federal Income Taxation," 34 *U. Chi. L. Rev.* 485, 491 (1967)).

[17] *Duberstein*, 363 U.S. at 286.

[18] *Id.*

[19] *Duncan v. Commissioner*, T.C. Memo. 2018-190.

[20] *Id.* at 17.

"compensation for a job well done (akin to a tip or gratuity for exceptional services rendered)."[21]

Similarly, in *Felton*,[22] the Tax Court focused on the amount of payment as evidence of donor's intent. It noted that focusing on objective evidence of a donor's intent means that the court must "ask whether the donations are of the magnitude and type that would make [it] doubt that what is called a gift amounts to one in reality."[23] The case involved a reverend who established an envelope system for his congregation, under which blue-enveloped donations were designated as gifts paid directly to him and white-enveloped donations were contributions to the church. The amount collected by the blue envelopes ended up being double the reverend's income, and he did not count it as taxable.

The court held that this was taxable income, not gifts, in accordance with the *Duberstein* rule. The congregants knew that the reverend's salary wasn't large enough to entice him to stay, which compelled them to donate, the court observed. It concluded that the ratio of the reverend's salary to the blue envelope donations showed that the members of the church contributed only so they could "keep their popular and successful minister." In sum, the magnitude and type of the contributions showed that they were not made from detached and disinterested generosity but instead out of the congregants' "desire to reward [the pastor] for his services and their hope that he would continue as their pastor."[24]

Although this is a fact-intensive inquiry, it is still a question of law; the facts and circumstances of the transfer need to indicate that the transfer satisfies the gift standard under section 102 as articulated in *Duberstein*. In *Poyner*,[25] the Fourth Circuit, based on its study of *Duberstein*, identified three steps that the lower court must follow in determining whether a payment is a gift and thus excludable from the recipient's gross income: (1) it must "make findings as to the basic facts, the actual happenings"; (2) it must draw from those basic findings its inferences about the dominant reason for the payment — "the answer to why the payments were made"; and (3) it must decide whether that dominant reason "is such as to require gift treatment and an escape from taxation under section 102, or income treatment and taxation under section 61." The *Poyner* court asserted that the third step is a question of law and is what allows appellate courts to consider these issues.

The *Duberstein* standard obscures uniformity because it provides no consistent standard that taxpayers can rely on in complicated situations, like those that GoFundMe can present. The factors discussed earlier — magnitude of payment, the nature of the payment (quid pro quo nature), and donor tax treatment — are complicated for GoFundMe because identifying them is not as simple as in the above cases in light of the unique platform GoFundMe provides. For example, if a landscaper began asking his customers to donate to his GoFundMe page instead of paying by check, it would be nearly impossible for the IRS to sort out all those transactions without engaging in a fact-intensive inquiry for each electronic transaction. The landscaper could deem the GoFundMe payments as gifts and argue that he had simply taken some time off work because of a family member's sickness, and his customers had helped him out through GoFundMe. Just because a taxpayer categorizes contributions as gifts and can cite using GoFundMe to collect donations does not mean that the contributions were donations.

For the most part, taxpayers are left to their own judgments of a transferor's intentions, and in turn, the accompanying decision to not report income on their tax returns. Taxpayers have discretion to make decisions when filing their returns to include or exclude items from their gross income. Although taxpayers have the responsibility of accurately reporting their income, the IRS then has the burden of catching mistakes individuals make on their returns. Further complicating things, there is no limit on the monetary value or frequency of gifts that a taxpayer can receive each year. As long as the transfer is made by a donor with detached and disinterested generosity, it is not includable in the

[21] *Id.* at 19-20.

[22] *Felton v. Commissioner*, T.C. Memo. 2018-168.

[23] *Id.* at 29 (citing *Duberstein*).

[24] *Id.* at 23.

[25] *Poyner v. Commissioner*, 301 F.2d 287, 289 (4th Cir. 1962).

taxpayer's gross income, but knowing the intent of donors cannot always be easy.

2. For gift tax purposes.

The definition of a gift for gift tax purposes is significantly different from its definition for income tax purposes. Under the gift tax laws, a gift occurs if the donor does not receive money or money's worth in return for the gift. For gift tax, donative intent is not necessary.[26] Section 2511(a) provides that the gift tax is to apply "whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real, personal, tangible, or intangible."[27] The regulations specify that "donative intent on the part of the transferor is not an essential element in the application of the gift tax to the transfer."[28] This includes "sales, exchanges, and other dispositions of property for a consideration to the extent that the value of property transferred by the donor exceeds the value in money or money's worth of the consideration given therefore."[29] The gift tax laws are relevant to crowdfunding transactions only in determining what gift tax the donor would owe on the gift.

Although there is no limit on how much taxpayers can receive per year, the code prescribes an annual limit of how much taxpayers can give to individuals before being subject to gift tax.[30] Section 2503(b)(1) provides that "in the case of gifts (other than future interests in property) made to any person by the donor during the calendar year, the first $10,000 of such gifts to such person shall not . . . be included in the total amount of gifts made during such year."[31] That $10,000 amount is adjusted for inflation every few years, in increments of $1,000.[32] For 2021, the gift tax exclusion amount is $15,000 per person.[33] This amount applies to each individual the taxpayer gives gifts to. For example, Taxpayer Ted can give $15,000 cash to each of his children, Amy, Brent, and Caroline, without paying gift tax on any of the gifts. However, once Ted exceeds the $15,000 threshold, he is responsible for paying tax on the amount of excess value. There is one additional caveat: namely, the lifetime gift tax exemption.

The lifetime gift tax exemption for federal taxes is a dollar amount that taxpayers can give away without paying tax. The Tax Cuts and Jobs Act virtually doubled the lifetime gift tax exemption amount; in 2017 the exclusion amount was $5.49 million and in 2018 the TCJA raised the amount to $11.18 million. This amount is similarly indexed for inflation and is at $11.7 million in 2021.[34] It is important to note that this is set to expire in 2025. If allowed to expire, the lifetime exclusion amount could be reduced to around $5 million.

The lifetime gift tax exemption works in conjunction with the annual gift tax exclusion because the federal gift tax and estate tax are entwined by the unified credit. For example, if Ted wanted to give his daughter Caroline $50,000 one year because of his generous nature, that amount would exceed the annual gift exclusion amount by $35,000. Ted would simply file a Form 709, "United States Gift (and Generation-Skipping Transfer) Tax Return," and indicate that he wanted to apply the lifetime exemption provided by the unified credit. Ted's lifetime exemption amount would then be reduced by $35,000. If he had not given any amount before, he would still have $11,665,000 remaining in his lifetime exemption amount. Simply, he will have $35,000 less of the unified credit to protect his estate from estate taxation when he dies.

Also, if Ted were to ever file a Form 709 again, he would need to indicate that he has filed it in the past and include on Schedule B information about gifts made in that prior tax period.[35] With the lifetime gift tax exemption now so high, paying gift tax is a problem few Americans worry about.

[26] *See Commissioner v. Wemyss*, 324 U.S. 303 (1945) (the Supreme Court described Congress as intending "to hit all the protean arrangements which the wit of man can devise that are not business transactions within the meaning of ordinary speech").

[27] Section 2501 actually imposes the gift tax. *See* section 2501(a)(1).

[28] Reg. section 25.2511-1(g)(1).

[29] Reg. section 25.2512-8.

[30] However, taxpayers can give unlimited amounts to charities with specific designations. *See* section 501(c)(3).

[31] Section 2503(b)(1).

[32] For gifts made after 1998, the inflation adjustment is determined by multiplying $10,000 by "the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 2016' in subparagraph (A)(ii) thereof." Section 2503(b)(2).

[33] Section 2503.

[34] Julie Garber, "The Lifetime Exemption for Federal Gift Taxes," *The Balance*, Jan. 15, 2020.

[35] IRS, "Instructions for Form 709" (Aug. 7, 2020).

However, for those who do pay gift tax, a significant amount of strategic tax planning usually accompanies those transactions. Although paying gift tax is not a widespread problem for taxpayers, it does apply to high-net-worth individuals who donate on GoFundMe. And while the laws are quite clear here — namely, that gift tax is owed on every gift exceeding the $15,000 exclusion amount — the prevalence of these large donations underscores the importance of issuing guidance on the tax treatment of these gifts for the recipient-taxpayers.[36]

Understanding how gift tax interacts with income tax is useful in considering some of the issues discussed in Section III.

II. Tax Treatment of Crowdfunding

On the "Taxes for Organizers" page of its website, GoFundMe declares that "donations made to GoFundMe campaigns are usually considered to be 'personal gifts' which, for the most part, aren't taxed as income." However, it goes on to note that in some circumstances, "the income is in fact taxable" and that the best way for the organizer to ensure compliance with the tax laws is to "maintain adequate records of donations received and consult with a tax professional." GoFundMe notes that as part of its terms and conditions, the organizer has represented that it is not providing any goods or services in exchange for the donation of funds. "As a result, GoFundMe will not provide you with any tax documentation for money raised on your fundraiser, nor will GoFundMe report the funds you collected as earned income."

The only guidance the IRS has issued on crowdfunding has been a June 2016 nonbinding information letter.[37] The party requesting the information letter sought advice about the income tax consequences of a crowdfunding effort to purchase a company through contributions. The letter specifically addresses whether the recipient has constructive receipt of the contributed funds before they are used to purchase the company, because those funds may have to be returned to the contributors:

> Crowdfunding revenues generally are includible in income if they are not 1) loans that must be repaid, 2) capital contributed to an entity in exchange for an equity interest in the entity, or 3) gifts made out of detached generosity and without any "quid pro quo." However, a voluntary transfer without a "quid pro quo" is not necessarily a gift for federal income tax purposes. In addition, crowdfunding revenues must generally be included in income to the extent they are received for services rendered or are gains from the sale of property.

The information letter concludes that "the income tax consequences to a taxpayer of a crowdfunding effort depend on all the facts and circumstances surrounding that effort." It then notes that "a taxpayer may request a private letter ruling from the [IRS] that applies the law to the taxpayer's specific facts and circumstances." However, obtaining a private letter ruling is expensive and requires an investment of time.[38]

Plus, it is not a simple process. The taxpayer must consult the first published revenue procedure of each calendar year to find the instructions and user fees for obtaining a letter ruling.[39] This could end the endeavor for the average taxpayer because the revenue procedure is a dense and complex read. The taxpayer must

[36] High-net-worth individuals have been donating large sums of money on GoFundMe frequently since the creation of the platform. When GoFundMe began, Taylor Swift tried to donate $50,000 to a fundraiser for funeral expenses. At that time, GoFundMe capped donations at $5,000 because its system wasn't set up for larger donations. Swift got around this by making many small donations that totaled $50,000. GoFundMe later changed its system to allow for larger donations. Nicholas Mojica, "Why Celebrities Are Turning to GoFundMe," *International Business Times* via Yahoo! News, Nov. 23, 2016.

[37] INFO 2016-0036. Information letters provide general statements of well-defined law without applying them to a specific set of facts. Rev. Proc. 2015-1, 2015-1 IRB 1, section 2.04. They are furnished by the IRS National Office in response to requests by taxpayers, by members of Congress on behalf of constituents, or by members of Congress on their own behalf. *See* IRS, "More About Information Letters" (Mar. 4, 2021).

[38] Scott E. Vincent, "IRS Addresses Tax Treatment of Crowdfunding," 72 *J. Mo. B.* 215 (2016).

[39] *See, e.g.*, Rev. Proc. 2020-1, 2020-1 IRB 1.

also consult the appendix of the revenue procedure to confirm that the issue hasn't been declared a no-ruling topic for that year. Even if the taxpayer gets that far, the fee for obtaining a private letter ruling could be the final nail in the coffin. Although the fees vary based on the taxpayer's gross income, the lowest fee is $2,800, which applies to taxpayers with gross income of less than $250,000. Taxpayers who receive donations through GoFundMe are often in dire need of financial assistance, so even the $2,800 user fee may be impossible for many of them to pay.

Because of the IRS's silence, the current tax treatment of crowdfunding relies on statutes and the standard established in *Duberstein*. Further complicating things, the two most popular ways of crowdfunding — the rewards-based and donations-based models — are taxed differently because of the different incentives that each provides.

A. The Rewards-Based Model

Money raised through the rewards-based model of crowdfunding is generally considered taxable income to the recipient. Because this model is built on the premise that the contributor receives something in return from the person, group, business, etc., seeking funds, the donor is not considered to be contributing out of a detached and disinterested generosity. Rewards-based crowdfunding still works in formats similar to ArtistShare, the original platform. There, as discussed earlier, contributors to Schneider's jazz album received priority in downloading her album, free downloads of the album, and accolades in the credits, based on how much money was given. The *Duberstein* rule tells us that these contributions are not gifts. While some of the contributors to Schneider's album could have been giving money out of detached and disinterested generosity, the fact that they received benefits in return excludes the transactions from being deemed gifts.

This idea becomes more complex when donors go above and beyond the set price of the benefit. For example, if Schneider offered a priority download to everyone who gave $10, but Taxpayer Ted donated $25 because he wanted to give her a little extra, is Schneider responsible for paying taxes only on the $10?

The taxpayer would most likely advocate that the extra $15 was a gift, while the IRS would probably argue that the entire $25 payment was a business transaction.[40] Under the latter view, it wouldn't matter that the stated price of the album was $10; given that a buyer was willing to pay $25 for that item or benefit, the entire amount paid should be included as taxable income.[41] The IRS might also see the extra $15 as a tip,[42] in which case it would be taxable income for the organizer.[43]

It appears that the only kind of donation in rewards-based crowdfunding that would not be subject to income tax is a contribution in an amount too small to receive any benefit from the organizer. For example, if a taxpayer gave $5 to Schneider, which was not enough to get even the smallest reward that she offered, that person would not receive any tangible benefit in return for donating. This means that the donation was given out of a detached and disinterested generosity and thus would be deemed a gift. Also, this would not be a tip in the relevant sense because it was not money received by an employee in the course of employment.[44]

At first glance, it seems that the rewards-based crowdfunding model could have more complex tax consequences than the donations-based model because money is being exchanged for tangible rewards. The term "donation-based" even seems to imply that all the contributions are simply donative gifts that would easily and consistently meet the *Duberstein* standard.[45] However, a closer examination of the donations-based model shows that while this general assumption might be true for most cases, some

[40] *See* Andrew M. Wasilick, "The Tax Implications of Crowdfunding: From Income to Deductions," 97 *N.C. L. Rev.* 710 (2019).

[41] *Id.*

[42] *Id.*

[43] Sections 61 and 6053(a). Note that section 6053(a) establishes a reporting requirement for the employee and employer for purposes of Social Security and Medicare taxes. Section 61 is the section that establishes that tips are taxable, because they are includable in gross income.

[44] Section 3121(a)(12).

[45] *Black's Law Dictionary* (2014) defines a donation as "a gift, especially to a charity; something, especially money, that someone gives to a person or an organization by way of help."

fact patterns of donations-based crowdfunding are nearly impossible to correctly categorize.

B. The Donations-Based Model

Money raised through the donations-based model of crowdfunding is generally not considered taxable income of the recipient. However, this can become complicated when donors receive intangible benefits that the organizer himself isn't offering or the mere identity of the donor results in intangible benefits through positive publicity.

For example, imagine a celebrity who donated to a GoFundMe page for a patient with leukemia. What if this celebrity had just been charged with drunken driving and needed to improve her public image? Donating thousands or millions of dollars to a child with cancer seems like a plausible way to gain positive publicity. Does that affect the determination of whether this contribution should be deemed a gift for the donee's income tax?[46] Looking to the *Duberstein* rule, the celebrity's intent determines whether the patient-recipient should treat the contribution as a gift or as taxable income. But because the celebrity's intent is the relevant inquiry, it is necessary to look into her mind and determine why she contributed the money. Because humans are not mind readers, it is impossible to create an accurate, consistent analysis that determines whether a contribution is a gift. Even if the celebrity had ulterior motives when making the contribution, who is to say that they overshadowed her true generosity?

A similar issue could arise if an employer decided to donate to an employee's GoFundMe page. Imagine a taxpayer who, after being severely injured by a vehicle while crossing a busy street, established a GoFundMe page for his medical bills. If his employer came across this page and wanted to donate, that gift would still be deemed taxable income to the taxpayer-employee. Although section 102(a) excludes gifts from taxable income, section 102(c)(1) specifies that the exclusion doesn't extend to any transfers made by an employer to an employee. The employer's intent is irrelevant; simply because she is the employer of the taxpayer, her gift would be deemed taxable.

Crowdfunding sites like GoFundMe complicate the enforceability of those provisions because contributors are allowed to donate anonymously. That issue is addressed in Section IV of this article, which considers whether preserving donors' ability to remain anonymous should be valued over trying to collect tax on those donations. Both the subjectivity of the intent inquiry and the difficulty of knowing the identity of donors lead to significant equitable and administrable issues for both the contributor and the recipient.

III. Equity and Administrability Issues

A. Equitable Concerns

The *Duberstein* rule applied to crowdfunding presents horizontal equity issues but simultaneously provides some solution to the vertical inequity of income tax laws.

1. Horizontal equity.

GoFundMe pages ultimately create horizontally equitable income tax results, but they may appear to do the opposite. For a tax to be horizontally equitable, two people who are similarly situated need to be taxed the same. This means that Taxpayer A, who receives $100,000 a year, should pay the same tax bill as another person who earns $100,000 a year. Because the money that people receive from GoFundMe is not taxable income and is considered a gift, Taxpayer B, who "earns" $100,000 on the site, will not have any income tax consequences. This seems horizontally inequitable because ultimately, A will not pay the same taxes as B, even though they have the same amount of incoming money. However, because the incoming contributions from GoFundMe are gifts, it is horizontally equitable.

Although this may seem inequitable, it is the correct tax result. There is something inherently different between earning an income and

[46] Here I am mainly concerned with categorizing this as a gift for purposes of determining the donee's income tax liability. This article is focused on addressing the income tax consequences of donees; however, this example illustrates an interesting gift tax consequence. Normally, contributions are gifts for gift tax purposes if the donor does not receive money or money's worth in return for the gift. But here, reg. section 25.2512-8 might also prevent a gift tax if the donation is given in the ordinary course of the celebrity's business, as long as she lacked any donative intent. So here, even for gift tax consequences, her intent could be relevant.

crowdfunding. Crowdfunding is meant to help people out in difficult or exciting times; it is intentionally entirely separate from earning an income. This makes sense in theory, but it becomes slightly more difficult to endorse when the crowdfunding is not simply for a cause like the Gaytans'.

Imagine Bob, a tax lawyer who recently lost his job. Instead of searching for a new job, he wrote a stirring, powerful story about the loss of his job on a GoFundMe page, which ended up funding his entire salary for the remainder of the year. If he received the exact amount of money that he would have earned working, the only change to his life is that none of the money is subject to taxation. Is this the desired result? Simply because he raised the revenue through a GoFundMe page, should it not be taxable?

2. Vertical equity issues.

Vertical equity examines how people of different income levels are taxed. Ideally, the American system should result in people with higher incomes paying more tax, because it is a graduated tax rate system.[47] This concept of vertical equity aligns with the U.S. tax system's historical tendency to favor progressive taxation. The interactions of income and gift tax laws create significant obstacles to obtaining that ideal result. Because people with higher incomes are allowed to give away so much of their wealth without paying gift tax on it, and in turn the recipients don't pay income tax on the gifts, a large portion of money can be passed from generation to generation without taxation. Further, because those wealthy taxpayers have access to more advanced, strategic tax planning avenues, they can exploit loopholes in the tax system that lower-income taxpayers are simply unable to find.

Donation-based crowdfunding fixes some of these vertical inequities by providing the same platform to taxpayers of all income levels and thus giving them the same opportunity to raise money for themselves. Because anyone can create their own GoFundMe page, all taxpayers have the same access to resources.

GoFundMe is unique in providing these resources, because it connects people who otherwise would not be connected. Here, it is helpful to understand the term "social capital," which Glenn Loury coined to "help account for persistent racial inequality in United States."[48] The concept behind the term "illuminates the difference between informal social relations and formal economic transactions — between reward and development bias — as mechanisms perpetuating the subordinate position of African Americans," Loury explains.[49] Philosopher Elizabeth Anderson builds on this term, asserting that social capital "refers to the networks of associates by which knowledge of and access to opportunities is transmitted."[50] She notes that "individuals tend to learn about job and education opportunities from their families, neighbors, coworkers, and friends. If one's associations have limited acquaintance with better jobs and have never been to college, then one is likely to remain ignorant of these opportunities as well."[51] This idea also translates to capital in the traditional, monetary sense. Those with more social capital tend to also have more money. This results in the people with all the capital associating together, insulating opportunities, in the form of both social access and monetary access, to their own social circles.

Similarly, many Americans often look to their family or friends for monetary assistance in times

[47] Throughout this article, I assume that my reader views the ideal tax system not as a flat rate, but as graduated tax rate system, resulting in the poorest Americans paying the lowest percentage of their income in tax, and the richest Americans paying the highest percentage. Under current law, the lowest tax rate, at the lowest bracket, begins at 10 percent, and the highest tax rate, at the highest tax bracket, is 37 percent. Americans fall into the lowest tax bracket if they are single and have taxable income of $9,875 or less ($19,750 or less for a married couple), while the highest tax bracket is for people who have incomes exceeding $518,400 ($622,050 for a married couple). There are five brackets between these income levels. *See* IR-2019-180 (announcing inflation adjustments for 2020).

[48] *See* Loury, "Why Does Racial Inequality Persist? Culture, Causation, and Responsibility," Manhattan Institute (May 7, 2019).

[49] *Id.* Loury coined the term "social capital" initially to distinguish this concept from "human capital," a familiar economics term. The human capital theory tries to account for "variation in people's earning capacities by analogy with well-developed theories of investment." Many models in this theory try to explain the persistent racial inequality within the United States, but they often exclude "the interactions between those social processes ensuring the reproduction of racial difference, on one hand, and those processes facilitating human development on the other hand," Loury explains.

[50] Anderson, "Fair Opportunity in Education: A Democratic Equality Perspective," 117 *Ethics* 595, 601 (2007).

[51] *Id.*

of emergency. Our networks and access to social and economic capital are limited by our connections in this regard: If we don't know someone who is wealthy, we can't ask them for assistance. As Anderson observes, people with more social capital associate with similarly situated people with more capital, and people with less social capital associate with those who also have less. This naturally translates to poorer Americans, or those with less social and monetary capital, not being able to even ask those who could help them to do so. GoFundMe remedies this disconnection. It bridges the gap between the American wealthy and the American poor and allows those in need access to those who can help.

In some ways, though, this platform still automatically favors higher-income taxpayers. Wealthier people will be more likely to have access to the necessary technology to create a GoFundMe page. However, this can ultimately be said about most opportunities provided by online resources. Also, 96 percent of Americans now own cellphones of some kind — and 81 percent own smartphones, which come equipped with the requisite technology for establishing a GoFundMe account and page.[52] Another issue is posed by the fact that GoFundMe requires users to have established bank accounts to deposit the money into. Many low-income Americans either choose not to bank or lack access to bank branches in their communities. This problem is also being remedied with smartphones, because it is now possible to set up bank accounts online, at the touch of a button on your phone.[53]

While higher-income taxpayers might have easier access to the internet and bank accounts to create the GoFundMe page, the most important part of a GoFundMe page is the story. Education may help some convey their stories more eloquently, but the substance of a GoFundMe page is really what tugs at donors' heartstrings and makes them donate. A story does not need to be written well; it only needs to explain why someone should donate to organizer's cause. People are given the opportunity to give some of their own wealth to a cause that they believe in, which works to redistribute the wealth, simply because people wish to do so. Thus, GoFundMe pages help mend some vertical inequity.

B. Concerns of Administrability

Administrability relates to the simplicity of a particular tax and the ability of taxpayers to understand the law. Intertwined with this criterion are the costs to taxpayers to comply with the law and the ability of and costs to the government to administer the law. Donations-based crowdfunding considerably complicates applying the correct income tax laws. While the majority of the donations made on GoFundMe most likely meet the *Duberstein* standard, the cases on the margins, such as the aforementioned celebrity donor, pose high administrability costs. Because so much of the relevant inquiry concerns the intentions of the donor, the administrability costs of consistently ensuring the correct tax result would be exorbitantly high, to the point of creating a disincentive through investigation. Because no consistent standard exists, anytime the IRS flags a GoFundMe contribution for either a contributor or a recipient, determining the correct tax result is not an efficient process.

1. Issues for contributors.

The tax consequences are significantly less for contributors, given how high the current unified credit is. Most taxpayers who donate to GoFundMe pages contribute less than the annual exclusion amount of $15,000. This means that most GoFundMe donors are not even required to file gift tax returns. The only people who would be affected by this system are the ultrawealthy taxpayers who donate more than $15,000 per person. They need to keep impeccable records of their gifting to maximize their unified credit. Other than this exception, the recipients of donations-based crowdfunding bear the brunt of the administrability issues presented, when contemplating their income taxes.

2. Issues for recipients.

To decide whether to treat a transaction as includable in gross income, the recipient needs to know the intent of the donor. This poses a large problem for the recipient, because it is impossible to accurately know the donor's intent. In

[52] "Mobile Fact Sheet," Pew Research Center (June 19, 2019).

[53] Many banks allow users to set up accounts without going into a brick-and-mortar branch. *See* "The Future of Account Opening 2018," Bottomline Technologies (2017).

Duberstein, the IRS was alerted that the Cadillac was not a gift because the donor, Berman, deducted the cost as a business expense. Duberstein believed the car was a gift, while Berman saw it as an ordinary and necessary cost of doing business. This mischaracterization of the car left Duberstein confused and with a hefty tax bill. GoFundMe pages run a similar risk. If a donor categorizes a contribution to a GoFundMe page as a payment and the recipient categorizes it as a gift, a similar situation could ensue.

Another issue arises if a single donation is both a gift and payment for services. Let's return to Bob, the tax attorney who lost his job and created a GoFundMe page. Assume he just mowed his neighbor's lawn and refused payment, telling her: "Oh, just go donate to my GoFundMe page. I'm trying to recover all my lost wages there." This neighbor has always liked Bob, so she grossly overpaid him for mowing the lawn, giving him a donation of $5,000. Surely, this would not all qualify as compensation for services and thus be taxable income. But is it all a tip for his services? Or does most of the $5,000 meet the *Duberstein* detached-and-disinterested standard? Categorizing this money seems like an impossible burden to place on organizers, and perhaps even presents an opportunity to evade paying taxes on services.

IV. Solutions

Duberstein does not define a gift satisfactorily enough, or thoroughly enough, for taxpayers to rely on it in complicated situations. It would be extremely helpful for Congress to provide some clearer guidelines on what constitutes a gift for income tax purposes. And a Treasury regulation speaking specifically to crowdfunding is necessary, given the prevalence of the practice.

Crowdfunding is a unique practice, built through the reach of technology, that it necessitates more recognition than only what the *Duberstein* court contemplated. That case was decided in the early 1960s, when the modern internet was beyond people's wildest imaginations.

Here I pose some possible solutions for fixing the problems that GoFundMe, and other crowdsourcing platforms, present. While considering these solutions is a worthwhile task, I ultimately conclude that implementing them is unnecessary at this time. It seems that the IRS is not significantly losing out on revenue through this practice — assuming that large donors are reporting and paying gift tax and that the *Duberstein* standard of giving is being met, the transfer is a gift under section 102 and therefore not taxable. More importantly, the tax system should be encouraging these kinds of donations because they fix some of the inequities and wealth imbalances in our country. The only helpful action that could be taken now is if Congress or Treasury issued guidelines that those who receive funds from GoFundMe could rely on.

A. Limiting the Donation Amount

Perhaps setting a limit on the amount that one can receive tax free through a crowdfunding site could ensure that Treasury doesn't lose revenue. But do we want to limit the amount of money people like the Gaytans can receive through GoFundMe? I argue that we should want the Gaytans and similar people in need to get as much assistance as possible. And as long as the *Duberstein* standard of giving with detached and disinterested generosity is being met, we also want these taxpayers to receive their money tax free. If a gift is intended, the contribution should be taxed as one. And as long as these standards are being met, the IRS isn't losing out on any funds. However, ensuring and enforcing that the *Duberstein* standard is being met is a difficult task.

B. Survey on Crowdfunding Sites

One potential solution to monitoring the *Duberstein* standard is to require all donors on crowdfunding sites to complete a short survey during the donation process. This would create documentation about the donor's intention at the time of the donation. The survey could ask two simple questions:

1. Are you receiving anything of value in return, including publicity?
2. Is the donee your employee, or do you have any business relationship with this person?

In almost all cases, if the donor answers no to both questions, *Duberstein* would likely be satisfied. On the positive side, this practice could prevent the IRS from developing issues surrounding donors' intent. However, it would make the donation process longer and slower, which could be a disincentive for some would-be donors. Much of the appeal of donating through a crowdfunding site is that it's quick and easy, and the survey would remove some of the simplicity. Also, a mishap could occur if someone accidently clicked the wrong buttons or simply didn't understand what was being asked.

Another large downside of the proposed survey is any mishap would affect the recipient of the money. If a donor answered a question the wrong way, for example, the recipient of the funds might unknowingly be subject to income tax on the money. And because GoFundMe allows donors to remain anonymous, tracking the donor down could be a problem for the recipient. It seems that this survey solution could have too many negative consequences for the receiver if the donor made a simple mistake.

C. Tax Forms for Crowdfunding

1. Contributions received (relevant to income tax).

To monitor and ensure tax compliance by donors and donees, the IRS could create, and require crowdfunding platforms to issue, tax forms for all contributions received and given through crowdfunding efforts. This process would be similar to the issuance of Forms 1099 from businesses to workers for the income that they received throughout the year outside traditional salaries.[54] Under current law, business owners must issue a Form 1099-MISC to each person that they have compensated at least $600 in the year.[55] A similar threshold amount could be established for GoFundMe donations. However, determining that threshold amount would necessarily be arbitrary to some degree. That is because there is no relevant amount for triggering taxable income; all income received, from any source derived, is taxable.[56] There could also be an additional hurdle if the threshold amount had to be established by statute, as the $600 limit for Form 1099 is.[57]

While this might be a reliable way for the IRS to account for all the donations received, if we accept the *Duberstein* decision as correct, a new tax form would be an overwhelmingly unnecessary step. Because *Duberstein* provides that contributions made with true detached and disinterested generosity are gifts, and section 102 tells us that gifts are not taxable income, we don't care how much money the receiver has gotten in gifts — it is all untaxable. No matter how much money someone receives through a crowdfunding platform, there is no reason to implement a tax form system similar to Form 1099 except to monitor the donations given, for the purpose of tracking gift tax owed. I address this possibility in the next section.

The only time this form would be helpful and necessary would be if the crowdfunding platform implemented my aforementioned solution of a requiring donors to complete a survey at the time of donating. If someone answered those questions and it was determined that the person was not making a detached and disinterested gift, a tax form like a Form 1099 could be helpful to alert the recipient that he was getting taxable income from a contributor, rather than a gift. Further, a third-party reporting form would be necessary to implement alongside a survey, because it would work to notify the IRS and the donee of that information. While this would solve problems that I discussed earlier, like collecting income tax from an employer donating to an employee, it seems that the new tax form would apply only to a handful of transactions.[58] The benefit of creating and implementing an entire system for these situations does not outweigh the costs.

2. Contributions given (relevant to gift tax).

For the donor, the amount donated is always relevant for gift tax purposes if it is more than the annual exclusion amount. So even though issuing a tax form to the recipient of crowdfunding proceeds would normally be useless, issuing one

[54] Joseph J. Thorndike, "Wall Street, Washington, and the Business of Information Reporting," *Tax Notes*, Feb. 13, 2006, p. 787.

[55] *See* IRS, "Instructions for Forms 1099-MISC and 1099-NEC" (Dec. 6, 2019).

[56] *See* section 61(a).

[57] Section 6041.

[58] A 2015 study showed that the average amount of donations generated by a user is $67 on GoFundMe. *See* Heather Joslyn, "GoFundMe Says Its Users Raised $1 Billion Last Year," Philanthropy.com (Dec. 2, 2015).

to the donor might help the IRS enforce gift tax law.[59]

The process would look like this: A donor donates more than $15,000 to one donee. GoFundMe would need to keep track of that, and at the end of the tax year, issue a tax form to the donor, stating the amount that she donated and the fact that this amount necessitates the filing of a gift tax return. By doing this, GoFundMe would be classifying that transfer of money as a gift, so it would be in GoFundMe's best interest to have also implemented my proposed donor survey. Recall that the survey would ask about the contributor's intent, to ensure that contribution was in fact a gift and not made for the purpose of payment from an employer to an employee, or a like-kind exchange. This survey would prevent GoFundMe from making a determination of the donor's intent; the donor's own answers would determine the intent.[60] It would thus protect GoFundMe from accusations that it was making conclusions of law — the platform would simply be automatically issuing a form if both the amount and intent requirements were satisfied — that is, the donation was greater than $15,000 and the survey concluded that the donor intended to make a gift.

Although this could be helpful, the disadvantages far outweigh the benefits. First, it would place an immense burden on crowdfunding platforms because they would be responsible for developing a system for issuing the forms. Second, the IRS would need to process all these forms, which could prove to be an overwhelming task for an already overburdened agency, depending on the number of transactions that exceed the $15,000 threshold. It might not be that burdensome if people customarily do not donate more than $15,000, but aggregating the donations would still prove to be a large task.

[59] Here I limit my discussion of issuing forms to information reporting and not just issuing letters to the contributors. I believe information reporting poses a better solution because it would notify the IRS about these transactions.

[60] If the form that GoFundMe was issuing had no tax ramifications, it would not need to state that a gift was made. However, because the form would be asserting that a transfer was made and thus that gift tax should be paid, GoFundMe would need to have proof of how it knew that a gift was actually made. Note that this does not necessitate knowing the intent behind the gift, because *Duberstein* does not apply to gift tax. *See Wemyss*, 324 U.S. 303.

Third, there are already laws in place to mandate the reporting of gift tax, which work as an incentive independently. Sections 6019 and 6075 mandate the filing of gift tax returns during every relevant tax year in which gifts that exceed the exclusion amount are given, which encourages the donors to file regardless of a third-party reporting document. If a taxpayer is giving amounts exceeding $15,000, the taxpayer is likely more cautious about complying with the law, to avoid triggering an audit.

The rest of my critiques concern the difficulties in creating this form, given the unique nature of platforms that encourage anonymous donations.

First, it would be easy to circumvent this system. Enforcing gift tax laws by establishing a threshold that would trigger the issuance of an IRS form would alert people to the relevant amount. This would produce a situation similar to the one Taylor Swift encountered, back when GoFundMe capped maximum donation amounts.[61] Swift easily avoided the cap by making multiple lower-amount donations. To address that workaround, GoFundMe would have to keep records of each user's total donations to other users in each year. So if Swift made three $14,999 donations to one GoFundMe user, that amount would then be aggregated, and she would be issued a form. While crowdfunding sites could develop software to catch multiple donations, that would take time and resources.

This could also work the opposite way. Implementing a threshold amount could give donors who would otherwise give larger amounts an incentive to make smaller donations to avoid the IRS's attention. And if someone really wanted to circumvent this system, she could simply create multiple user accounts and make multiple donations that way. This leads to another point: To do this, each donor would need to provide his Social Security number when donating. Users of crowdfunding platforms are looking to donate quickly and simply over the internet. Most likely,

[61] *See* Mojica, *supra* note 36.

they are not going to want to provide their SSNs on this unsecure platform, because it has been statistically proven that Americans do not like sharing their SSNs.[62]

On the contrary, it could be argued that implementing this system would not create that large a burden for GoFundMe or the IRS. Because crowdfunding platforms' business models are centered on many small donations making a large impact, a $14,999 threshold would not trigger the issuance of many forms. A significant portion of the donations made on GoFundMe's website are under $100.[63] But this still works against issuing a form, because the IRS simply isn't losing enough money to justify the work of creating and issuing a form.

An alternative solution may be to establish a much higher threshold amount, to really target only the largest transactions. The amount could be set somewhere around $100,000. This would bring down the compliance costs for crowdfunding platforms while still allowing the IRS to account for large donations and thus enforce the gift tax requirement for the largest transactions. Although this seems like a useful compromise, it works directly against what crowdfunding platforms inherently offer: a place where strangers can quickly and anonymously donate to others simply because they want to. Creating any sort of paper trail linked to the IRS could discourage some otherwise large donors from giving at all. These crowdfunding platforms create a unique space for kindness and generosity, and I fear that involving the IRS might hurt people's willingness to give money.[64] This would then negate my earlier point, that crowdfunding sites work to restore some of the gross vertical inequities plaguing America.

D. Formal IRS Guidance

Although the best option might be leaving current practice alone, it would still be helpful for the IRS to issue some guidance on its understanding of the income tax treatment of crowdfunding. The agency should provide more than the nonbinding information letter that it issued in 2016. It is important that taxpayers know with confidence how funds raised on GoFundMe will be taxed. If the IRS issued some sort of guidelines, GoFundMe would likely continue to operate as it does now. Most of the donations don't raise significant issues and are being treated as the tax code would otherwise prescribe. However, for the few uncertain cases, regulations could preemptively eliminate any administrability problems.

V. Conclusion

If 17,300 people gave money to Charles and Kayla Gaytan as wedding presents, no one would question that each monetary contribution was a gift. However, when they received money from 17,300 people on GoFundMe, those funds appear inherently different. While both situations are taxed the same, it is useful to question why.

GoFundMe was created to help people like the Gaytans, who were faced with extreme circumstances. When this platform began, it seemed unfathomable to need to contemplate posts like Kellen Riley's, who recently created a GoFundMe page titled, "Please Help Me Pay My Taxes."[65] He explains that he "just realized that [he] owes $3,000 in taxes" and says that "anything helps." Is it an optimal result that someone who realizes that he has to pay taxes should be able to fund those taxes with tax-free money? Further, is it right that GoFundMe can be used both for touching stories like the Gaytans' and for pleas regarding mundane things like unpaid tax bills? While no one has yet donated to Kellen, it seems that both Congress and the IRS have no problem

[62] Studies have shown that avoiding giving out one's SSN or bank account numbers is the No. 1 measure that people practice to reduce their risk of identity theft. *See* Barbara O'Neill and Jing Jian Xiao, "Consumer Practices to Reduce Identity Theft Risk: An Exploratory Study," 97 *J. Family & Consumer Sci.* 33 (Jan. 2005).

[63] *See* Joslyn, *supra* note 58 (reporting that the average donation is $67).

[64] Many Americans strongly dislike the IRS. When 900 Americans were polled, 39 percent said they liked their in-laws better than the IRS; 22 percent said they like cold showers better than the IRS; 21 percent said they liked traffic jams better than the IRS; and 18 percent said they liked snakes and spiders better than the IRS. Another study surveyed views on more than 13 government agencies. The IRS ranked at the bottom of the list, with 51 percent expressing an unfavorable view of it. *See* Pew Research Center, "Trust in Government Nears Record Low, but Most Federal Agencies Are Viewed Favorably" (Oct. 18, 2013).

[65] Riley, "Please Help Me Pay My Taxes," GoFundMe (Apr. 1, 2020) (page has been removed).

with this practice — at least, that's the impression their silence gives.

The prevalence of crowdfunding today necessitates that Congress or the IRS issues some guidelines to regulate the practice of donations-based crowdfunding. More guidance would allow sites like GoFundMe to maintain their integrity as a place for genuine donations and give recipients assurance that they are paying the correct taxes on the funds they receive. ■