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THE IMPACT OF THE TAX REFORM ACT OF 1969 UPON CHARITABLE CONTRIBUTIONS OF ORDINARY INCOME PROPERTY

bу

John Martin Strefeler

A Dissertation Submitted to the Faculty of the COMMITTEE ON BUSINESS ADMINISTRATION

In Partial Fulfillment of the Requirements For the Degree of

DOCTOR OF PHILOSOPHY

In the Graduate College

THE UNIVERSITY OF ARIZONA

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THE UNIVERSITY OF ARIZONA

GRADUATE COLLEGE

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Final approval and acceptance of this dissertation is contingent on the candidate's adequate performance and defense thereof at the final oral examination.

STATEMENT BY AUTHOR

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SIGNED:

Dedicated

with much love

to

Robert M.

and

Ruth B.

Strefeler

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ABSTRACT

The Tax Reform Act of 1969 materially altered the tax treatment of charitable contributions of ordinary income property. Previously a deduction for the fair market value of the property was allowed; the Act restricted this deduction to the adjusted basis of the donor. The purpose of the study was to analyze the intent of Congress in enacting this provision, to determine the effect of this provision on the donation of ordinary income property, and to evaluate alternative tax approaches for meeting Congressional intent.

The history of the charitable contribution deduction was examined to determine how Congressional intent developed and how it changed during the drawing up of the 1969 Act. The examination indicated that the intent of the deduction for donations had been to provide an incentive for such giving. This objective, as well as the objective of doing so without permitting unjustified tax benefits, have been maintained intact over time. They remained present in 1969; Congress merely decided that the objective of abuse prevention had been neglected.

The philosophical basis of the intent of Congress was studied and the Congressional intent was found to rest upon several assumptions. The two key assumptions were that it was worthwhile to support philanthropic institutions and that the tax system was the best way to provide that support.

Analysis of the 1969 Tax Reform Act disclosed that a number of undesirable side effects (or potential side effects) which had existed under the prior law were removed. These included vertical inequity as well as the preferential treatment given to property donations and service donations. The 1969 Act also removed the potential of a donor making a profit from charity in the sense that the tax avoided on unrecognized income plus the tax saved due to the deduction would exceed the fair market value of the property. Other problems avoided were the need to set subjective valuations (along with the potential for overvaluation) and the chance of eroded taxpayer confidence as a result of the other problems.

Empirical evidence was developed to determine if the Tax Reform Act created results which were consistent with Congressional intent.

A mail survey was sent to artists, art museums, government archives, and university libraries. Another survey was sent to university foundations; inquiries to selected politicians supplemented this survey.

The evidence indicated that donations of works of art by the creating artist had decreased due to the 1969 Act. Income tax factors appeared to be the most significant influence on donation decisions. For donations of papers and similar materials by politicians, there did not seem to be a change in contributions due to the Tax Reform Act. Such other factors as personal prestige appeared to affect donations more strongly than income tax factors. Other survey information suggested that contributions by literary figures may have been materially reduced due to the 1969 Act.

Since the incentive to give was present without any tax inducement for political papers, the restriction of deduction to adjusted basis was found to be an acceptable tax treatment for this type of property. The need for a stronger incentive for artistic contributions pointed to the need to revise the 1969 law. A tax credit based upon fair market value was found to be the best alternative. Such a provision appeared to provide a greater incentive while still avoiding the undesirable side effects which had occurred under prior law.

CHAPTER 1

INTRODUCTION

Congress has attempted to use the tax system to accomplish a variety of objectives. These objectives include raising revenue, achieving economic and social goals, and approximating equity in the tax burden distribution.

Often tax legislation involves trade-offs because the pursuit of some goals may be detrimental to the achievement of others. The difficulty of resolving the frequently conflicting objectives is compounded by the tendency of individual provisions to have a greater effect on some groups of taxpayers than on others. The complexity of relationships may lead to results which were not anticipated at the time the law was enacted.

Evaluation of the success of Congress in accomplishing the goals to which it aspires is vital so that tax provisions which are ineffective in reaching their intended results may be identified and remedied. There is, however, no formal Congressional procedure which monitors the tax system in order to evaluate the consequences of Congressional actions. It is therefore important that private sources undertake this examination function. Through such studies, Congress can be made aware of the effects of the various provisions of the current tax law and the potential impact which might result from their continuation.

Statement of the Problem

The Federal Income Tax system was materially restructured by the Tax Reform Act of 1969. The Act was a comprehensive document of tax legislation which was regarded by many experts as a landmark effort in tax reform. Former Secretary of the Treasury David M. Kennedy, for example, referred to it as "a milestone in tax legislation" (U.S. Congress, Senate, Committee on Finance, 1969a, p. 495).

Section 170, which deals with the deduction for charitable contributions, was one of the sections which was most altered. After more than fifty years of liberalizing the provisions relating to deductions for charitable giving, Congress reversed that trend and placed more restrictions on these deductions. One of the key revisions was the virtual elimination of the tax benefits from the donation of ordinary income property. The Act removed fair market value as the measure of the amount of the donation by limiting the deduction to the adjusted basis of the property.

The primary purpose of this research effort was to determine if the effects of the Tax Reform Act of 1969 on charitable contributions of ordinary income property were consistent with the intent of Congress. The resolution of this issue is not obvious since actual tax effects often differ from desired results. It may be that what was intended to be a milestone for society became a millstone for some members of the nonprofit sector. Mr. Paul G. Peterson, representative of the Commission on Foundations and Private Philanthropy, spoke of this point before Congress:

I was describing some of the negative effects on philanthropy to a physician friend recently, who said: "That sounds like what we call an <u>iatrogenic</u> disease." He explained that the word "iatrogenic"... refers to unintended diseases or side effects that are caused by the medical treatment itself. We appear to have a similar problem here. Those of you who have the responsibility to decide tax policy must look at our entire body politic and balance the effects of treating afflictions of a part of the body with the effect upon the system as a whole (U.S. Congress, Senate, Committee on Finance 1969a, p. 6135).

To the degree that there were differences between Congressional goals and actual results, a secondary purpose of this study was to investigate the desirability of replacing the existing tax provisions with one of several alternatives which might be more consistent with Congressional intent. As Mr. Peterson stressed to the Senate Finance Committee, "Every expert . . . agrees that current incentives have serious defects, and that the assignment to define new approaches . . . is indeed a worthy one that would challenge the best economists and tax experts in the country" (U.S. Congress, Senate, Committee on Finance 1969a, p. 6140).

Amending the charitable contribution deduction rules would not be the only method capable of reconciling objectives with results. A change in Congressional intent could also eliminate any discrepancy between goals and results. The choice of modifying Congressional intent would be appropriate, for example, if Congress had originally underestimated the potential benefits of the provision. A second instance which would indicate the need for a change in intent would be if the tax objective were discovered to be achievable only at the expense of other objectives which were higher in priority. As a final example,

circumstances could occur such that the goal which Congress had originally intended may no longer be desirable.

In comparing the objectives of Congress with the results achieved, this study did not evaluate the appropriateness of Congressional intent. Such a limitation was needed so that there would be a fixed reference point (existing Congressional intent) against which the effects of the ordinary income property provision could be measured. If both intent and results were considered to be flexible, there would be no way of drawing meaningful conclusions. Many possible solutions would exist which would match the two. Redefining Congressional intent as some new goal was also considered unsatisfactory because such a decision could not be made without the introduction of a substantial degree of subjective judgment.

To meet the objectives of this thesis, it was necessary to resolve a number of intermediary issues. Accordingly, the design of the study included the following subordinate goals: (1) to investigate the intent of Congress as it enacted and modified the tax provision authorizing a charitable contribution deduction; (2) to determine the relationship between the Congressional intent in restricting the deduction for contributions of ordinary income property and the intent of Congress with regard to charitable contributions in general; (3) to analyze the underlying basis for the Congressional decision to support philanthropic institutions by means of tax incentives; (4) to explore the relevant factors in devising a tax incentive to promote philanthropy in a manner consistent with the intentions of Congress; (5) to

determine the effect of the Tax Reform Act of 1969 on donations of some selected types of ordinary income property; and (6) to evaluate some alternatives which may be appropriate in satisfying the intent of Congress to encourage donations of certain forms of ordinary income property.

Importance of the Study

Philanthropic institutions are a means by which members of the American public voluntarily provide goods and services which contribute to the general betterment of society and care for the needs of the less fortunate. These institutions have played a significant part in advancing many facets of society, including education, religion, health, social welfare, culture, and civic activities.

Philanthropic organizations depend heavily upon the contributions of individuals. Voluntary donations provide the means by which
these institutions perform their services; their activities would be
reduced if the level of charitable contributions were to fall. To assist philanthropic organizations, Congress encouraged charitable contributions by including in the federal income tax laws a deduction for
charitable donations. Because of the importance of donations to philanthropic institutions, it is imperative to monitor the repercussions
of any change in the tax treatment of charitable contributions. This
study, in recognition of the importance of periodically examining the
tax system as it relates to philanthropy, evaluated one specific area
of the charitable contribution deduction with the expectation that the

results might be useful to Congress and to other policy makers and concerned parties in reassessing that area and that appropriate decisions might be made about the most desirable tax legislation in that area.

Review of the Literature

Current literature was reviewed to assess the opinions of scholars in the area of charitable contributions. The literature also provided an awareness of techniques employed by such experts and thus an ability to place this study in proper perspective.

While considerable writing has been done on charitable contributions, most of it has been descriptive rather than empirical. Little has been written about donated property provisions. The majority of the articles were explanatory, discussing the opportunities which were available through tax planning. These articles also failed to isolate ordinary income property since all appreciated property was previously governed by the same tax principles. An often-cited article by Rudick and Gray (1961, pp. 283-313) discussed the double beenfits available from donated property. These benefits arose since there was not only a deduction for value but also a nonrecognition of income for the appreciation.

Studies by Taussig (1967, pp. 1-19) and Schwartz (1970, pp. 1264-1291) analyzed the incentive effect of the charitable contribution deduction. The purpose of each was to determine the strength of the income tax deduction in eliciting incremental donations. Their

statistical techniques were applied to contributions only in the aggregate as the data sources did not allow segregation of property gifts. Taussug did present information which was consistent with the proposition that the tax treatment of appreciated property is a significant incentive. It was only suggestive, however, and was presented solely in the context of being consistent with his general conclusions.

The study which appeared to be most closely related to the present investigation was conducted by Hunter; the results were contained in his book, The Tax Climate for Philanthropy. He studied major donors because he believed that "the really large contribution is essential to the financial health of most gift-supported institutions" (Hunter 1968, p. 114). Mr. Hunter conducted his study to discover the effect of tax incentives upon large gifts. He interviewed donors who had made large gifts and government officials who were involved in setting tax policy. The interviews with donors focused on sixty-nine gifts which were characterized as being major in size, and forty-six of which were donations of assets which had appreciated in value.

The results of his survey, as shown in Table 1.1, indicated that tax factors did influence donation decisions. In particular, restricting deductibility to cost (which is what was shortly to take place for ordinary income property) was estimated to reduce charitable gifts by nearly one-half. The implications of these findings for ordinary income property were not clear since the study primarily involved capital assets (particularly real estate and corporate stock).

Table 1.1 Donors' Estimates of Effect on Their Gifts of Some Supposed Changes in the Tax Law

Supposed Change	Estimated Percentage Decrease
Removal of income tax deductibility	42.5%
Deductibility restricted to donor's cost rather than fair market value	46.0%
Deductibility allowed for fair market value but donor required to pay capital gains tax on his appreciation	n 34.0%
No deduction allowed but income tax rates reduced by one-half	13.0%

Source: U. S. Congress, House, Committee on Ways and Means, 1969a, p. 1487.

As this review of related literature has suggested, there has been a lack of research in the area of charitable contributions of ordinary income property. A limited amount of research bears some relationship to this area; due to the remote linkage to ordinary income property, however, no extrapolation of the results to such property is warranted. There is a need for studies which relate specifically to ordinary income property.

Methodology

Congressional documents were a useful source of information in completing this research. Among the documents studied were various revenue acts as well as reports from the committee on Ways and Means of the House of Representatives, the Committee on Finance of the Senate, and the Joint Committee on Internal Revenue Taxation. These materials provided insight into Congressional reasoning and its objectives in molding the charitable contribution deduction.

The texts of the 1969 hearings of the Ways and Means Committee and the Finance Committee were extensively used. These writings proved to be valuable in understanding Congressional intent, as well as providing scholarly comment on the philosophical framework for use of tax incentives for charitable contributions.

The Congressional materials, while helpful in providing a foundation, generally did not focus upon ordinary income property as narrowly as would have been desriable. This absence of information concerning contributions of ordinary income property created a need to

gather data from individuals and institutions who were familiar with decisions regarding such giving. The survey was conducted using two mail questionnaires. Supplementary data was obtained by a mail survey of selected politicians of national prominence.

The research was designed primarily to measure the effects which institutions have perceived in donations of ordinary income property as a result of the Tax Reform Act of 1969. The research also attempted to enrich this information by determining how selected individuals had changed their giving as a consequence of the 1969 Act. A secondary motive was to ascertain the opinions of these institutions and individuals about various matters relating to ordinary income property and its contribution to philanthropic institutions.

Scope of Coverage

Subsumed in the category of ordinary income property are types of property which are very diverse. Included, for example, are farm crops in the hands of farmers, appreciated capital assets whose holding periods would cause the gains to be recognized as short-term capital gains, preferred stock under certain circumstances, and business inventory. While the tax treatment accorded to donations of these various assets would be the same, it was neither desirable to group them together in a single analysis nor practicable to examine each one individually.

Given the profusion of forms of ordinary income property which exists it was decided to select some major types of ordinary income

property and to restrict the scope of detailed analysis to these forms of property. It was further resolved that the choices should be made so that the asset categories would be of general significance.

An examination of the committee hearings and committee reports which accompanied the Tax Reform Act of 1969 disclosed that two categories of assets seemed to draw particular attention. Therefore, these assets were chosen for study. One class of assets consisted of works of art which were still owned by the creating artist. The other was composed of the professional papers of political figures which were still in the possession of the public official.

These assets, which will be referred to as owner-created property throughout this paper, were also appealing because each category had a degree of internal cohesiveness which might be absent from other forms of ordinary income property. The donation of works of art, for instance, could be expected to involve similar circumstances for most artists. The range of decision factors, potential recipients and other items of importance would seem to be wider for other kinds of ordinary income property.

The Initial Questionnaire

Information was gathered by means of a questionnaire mailed to individuals and institutions which seemed likely to be affected by the restricted deductibility of owner-created property. The primary purpose of this questionnaire was to ascertain what changes had occurred in the level of donations of the selected types of ordinary income property.

Factors in the Selection of Institutions. Due to the nature of the inquiry, it did not seem that this survey was amenable to the use of a sample which was obtained through a random selection process. Works of art would seem likely to be most often donated to art museums, but at times they might be donated for display by such other charitable institutions as government bodies. They might also be contributed to charities to be auctioned or sold rather than displayed. It would therefore be infeasible to define the population of all relevant recipients of donated art objects. Further, some art museums would not be appropriate recipients of the works of contemporary artists.

Political papers involved the same considerations as did works of art. There was no comprehensive list of all potential repositories for such papers, and there was no single type of institution all of whose members were active in the area of political papers.

Consideration of these problems led to the decision that information could best be obtained from a judgment sample. The survey was directed to the groups of organizations which appeared to be the most logical recipients of these types of property gifts. Institutions within these groups were then chosen in such a manner that it was hoped that those selected would represent a large percentage of total potential receipts. It was also intended that the selection process would exclude those organizations with only a minor involvement with these kinds of donations.

<u>Institutions Chosen</u>. The institutions selected were art museums, state archives, and university libraries. They were regarded

as most likely to receive and exhibit materials which resulted from the donor's creative efforts.

One group consisted of selected art museums. A number of criteria were established with only those museums which met all of the criteria being selected.

The first criterion was that the institutions must have been identified as being a fine arts museum located within the United States. This was done by using a list which was contained in The Directory of World Museums (Hudson and Nicholls 1975, pp. 629-632). This particular source was chosen because it used a selection process which was consistent with the goals that existed in selecting a sample. The short introduction to the Classified Index of Specialized and Outstanding Collections indicated the selection process. "This index has been compiled in order to make it easier to identify museums and collections within museums which are exceptionally important or interesting within a particular field" (Hudson and Nicholls 1975, p. 603). The purpose of this screening device was to limit the selection to institutions which devoted a significant amount of their time and interest to activities which could involve ordinary income property.

Several additional criteria were used, with information for each being obtained from the <u>American Art Directory 1976</u> (Jaques Cattell Press 1976a). Only those institutions which were members of the American Federation of the Arts (AFA) were contacted. Since the AFA is a professional organization one of whose purposes is to promote information regarding private support to public museums, it should also tend

to identify institutions which would be most likely to respond to querries regarding charitable gifts.

Another criterion was that institutions were surveyed only if they were in existence prior to January 1, 1956. Through the use of this requirement, institutions which were in the early years of growth were removed from consideration. They were inappropriate subject for two reasons. The first was that due to their limited experience, they might not have the necessary background to respond to some of the questions. Secondly, data regarding their personal experience in receiving ordinary income property would be impossible to analyze because any trend might be dominated by the fact that they were in the growth phase.

Institutions were also rejected if their descriptions did not indicate an annual attendance of at least 35,000 persons. Smaller institutions were rejected because any large changes in annual contributions might be random or orindary income property donations could be so small that a trend would not be identifiable. This criterion removed few museums and, given their small size, was not likely to strongly influence the results. In any event, the intention of the questionnaire was to solicit responses from parties who were most heavily affected.

Finally, some institutions were removed for other reasons.

These included collections which were held by public libraries and preserved private mansions, for example. The principal direction of interest of such museums indicated that they would have little or no

contact with the area of ordinary income property. University museums were also excluded because university-affiliated organizations were, as explained in the next paragraph, already heavily represented in the survey in the form of college libraries.

A second set of institutions which was used was the acquisitions sections of the libraries of land grant colleges. These were identified by reference to <a href="https://doi.org/10.1001/jhear.2007/j

The addresses and individuals to be contacted were determined through the use of the American Library Directory 1976-1977 (Jaques Cattell Press 1976b). In virtually all cases, it was the chief acquisitions librarian who was contacted. Where no such person was indicated, the most appropriate individual identified was contacted.

This group was chosen as a sample of universities, with the thought that they would indicate any trend in the giving of public papers by individuals to colleges and universities. Since one logical recipient of the papers of a public personage was his alma mater or a university which was important in his local area, it was felt that this group should be considered.

The third set of institutions which was contacted was state archives. These would be logical depositories for the public papers of state and national politicians. A man who worked as a public servant in a representative capacity for a state or a state subdivision might logically decide to donate those papers related to his public

service to the division of state government which was charged with caring for and providing public access to documents of a public nature and a public interest.

A directory of persons to contact in each of the state archives was found in a list of state archives contained in The National Directory tory of State Agencies 1974-1975 (Matthew J. Vellucci, Nancy D. Wright, and Gene P. Allen 1974, pp. 320-324). The directory, arranged by state, gave the name and title of the person to contact and the mailing address. For several states the name of the individual was not available and so only the office was stated.

Factors in the Selection of Individuals. As was true with institutions, the use of a random selection process was considered to be inappropriate in selecting a sample of potential contributors of owner-created property. The desirability of dealing with the largest and most important of potential gifts suggested that a judgment sample was consistent with the objectives of the study. In this manner, emphasis would be given to the most significant gifts and those of lesser consequence would be deemphasized. This was also desirable to operate most efficiently within time and money constraints.

Individuals. The second version of the questionnaire was sent to well-known persons in the creative arts and to prominent political figures. Two groups of politicians were contacted. One group chosen was the current state governors. A list of governors, as of the November 4, 1975 election, was contained in The World Almanac 1976 (Delury

1975). The other group of politicans consisted of the current members of the United States Senate. Their names and mailing addresses were obtained from the 1976 Official Congressional Directory (Government Printing Office 1975, pp. 212-215) which was accurate as of December 19, 1975. These groups were chosen because persons in such positions were felt to have accumulated the largest collections of potentially valuable personal papers.

Due to the great many artists living in the United States and the limited resources available in conducting this research, only those artists living in specific geographical areas were considered. The three areas selected were Arizona, Hawaii, and the District of Columbia. Arizona and Hawaii were selected because the researcher lived in these two states while conducting this study. The District of Columbia was chosen in order to provide further geographic diversity in areas surveyed.

It was hypothesized that there were no significant differences in the opinions and observations of artists residing in different geographical areas. This was tested by applying a Chi Square test to the answers of the artists, with the responses to each question grouped according to the place of residence of the artist. Using a significance level of 0.05, only two of twenty-six tests indicated significant differences in answers among artists of different geographical areas. Additionally, the level of significance even in those two instances was marginal. It was therefore concluded that there were not significant differences in the responses of artists in the three geographical areas.

American Art 1976 (Jaques Cattell Press 1976c). Artists within the three geographic areas were chosen only if they were identified in the index as painters. This was appropriate since (1) the impact on such a group should be reasonably consistent throughout and (2) painters were by far the largest group of artists identified, accounting for approximately eighty percent of all artists.

The one additional screening device which was used was that painters were not contacted if they were affiliated with a museum in an administrative capacity. Thus, a painter who was also identified as a curator was not contacted. Artists were being contacted to provide their views as artists. Since there was no method for "purifying" the responses of persons who were, so to speak, "on both sides of the fence," it was judged best to exclude them from consideration. As a practical matter, few individuals were excluded because of this stipulation.

Questionnaire Description. The questionnaire was a four-page instrument. Two forms of the survey instrument were used. One form of the questionnaire was designed to be completed by the philanthropic institutions, while the other was devised for use with the individuals. There were two major differences between the two instruments. One disparity concerned the substantive questions, but was not a significant difference. The wording of the problems had to be adjusted so that it would be appropriate for the recipients. The other distinction was

that the requests for demographic data were dissimilar due to the differences in the two groups contacted.

The questionnaire consisted of five parts. The first portion, which occupied the first two pages, asked the respondents to provide a variety of information and opinions by marking boxes which indicated their sentiments. The second part asked the respondents to provide specific dollar information about their charitable contributions histories. This was followed by an open-ended question which asked for a recommendation pertaining to the best tax treatment for contributions of ordinary income property. The final two portions of the question-naire consisted of a section concerned with personal data and an area where respondents were invited to add any narrative comments that they might wish to make.

The questionnaire was accompanied by a cover letter, a request slip which was to be completed and returned if the respondent desired a summary of the findings, and a pre-addressed, stamped return envelope. A copy of each form of the questionnaire is presented in Appendix A.

Questionnaire Responses. A total of 496 questionnaires were mailed out on August 9, 1976. The breakdown of institutions and individuals contacted, and of those who responded, is indicated in Table 1.2.

The response rates for the various types of institutions (26%-39%) appeared to be satisfactory. The rate of response for artists (16%) was somewhat lower than that for institutions, but was nevertheless judged to be adequate. This seemed appropriate since this

Table 1.2. Summary of Response Rates to August 9, 1976 Questionnaire

	Number of Questionnaire Sent	Number of s Questionnaires Returned	Per- centage
Individuals	329	9 38	12
Politicians	150	10	07
Senators Governors	100 50	4 6	04 12
Artists	179	. 28	16
Hawaii Dist. of Columbia Arizona	38 50 91	5 9 14	13 18 15
Institutions	16	7 55	33
Papers Depositories	101	29	29
State Archives University Libraries	47 54	12 17	26 31
Art Museums	66	26	39
Total	490	5 93	19

Source: Survey of Artists, Politicians, Art Museums, and Depositories on August 9, 1976.

information was supplemental to that which was obtained from the art museums and a nonrespondents test was therefore not deemed necessary.

The returns from politicians were few in number and low in quality of information, and consequently were not used. Furthermore, it was decided that additional information would be valuable from institutions which might be recipients of political papers. This decision was prompted by the realization that the responses of the institutions to the initial questionnaire were the result of the influence of both political papers and literary materials.

Survey of University Foundations

The analysis of the initial questionnaire disclosed that additional information was needed about the effect which the 1969 tax change had had on charitable contributions of the personal papers of political figures. This information was obtained by means of an additional questionnaire.

The second questionnaire was sent to university foundations because, due to their positions, they could be expected to be among the first segments of society to become aware of changing donor intentions. One hundred university foundations were selected based upon the factors of size, age, location, and prestige. Those selected included both public and private institutions, and leading schools from all parts of the United States. The result was felt to be a very useful sample because such a large sample was used in relation to the total and those chosen were done so because of size or prestige or both.

Description of Survey. The survey instrument contained two questions which were to be answered in narrative form. The first question requested that the respondent indicate the extent to which gifts of political papers to his institution had been affected by the Tax Reform Act of 1969. This was followed by a question asking how worthwhile the personal papers of political figures were as archival material. The questionnaire included a closing comment which encouraged the respondent to make any further comments that he might wish to express.

The questionnaire was accompanied by a cover letter, a requestfor-results slip, and a stamped, pre-addressed evelope. A copy of the questionnaire is presented in Appendix A.

Responses to Survey. This questionnaire was mailed during

December 1976. There was a response rate of forty percent of the total.

Extended Inquiries

Since responses to questionnaires required time which many of the politicians indicated that they did not feel they could spare, an alternate means to gather data was pursued. As was mentioned earlier, several nationally prominent politicians were contacted in order to gain this additional information. Seven of the eight senators who retired at the end of their current term were asked to indicate the intended disposition of their public papers and the influence of tax laws. The other retiring senator, Philip Hart of Michigan, died during his last days in office. Letters were also sent to Hubert H. Humphrey and Nelson A. Rockefeller to inquire about the disposition of their

Vice-presidential papers and to Gerald R. Ford to ask about the disposition of his Presidential materials.

Description of Inquiries. The retiring members of the Senate each received a mailing containing a cover letter, a one-half page question sheet, and a stamped, pre-addressed envelope. The question sheet included questions asking about the intended disposition of their senatorial papers and the degree to which taxes were a factor in their decisions. A copy of the question sheet is contained in Appendix A.

Personal letters were sent to Gerald Ford, Nelson Rockefeller, and Hubert Humphrey requesting information regarding the intended disposition of their public papers. A copy of the letter sent to Gerald Ford is presented in Appendix A.

Responses to Inquiry. The letters to these political figures were sent at the end of December 1976. Responses were made by Mr. Ford, Mr. Rockefeller, Mr. Humphrey, and five of the Senators. The results are summarized in Table 1.3.

Assumptions and Limitations

(1) A detailed analysis of the propriety of the intent of Congress was beyond the scope of this study. While some discussion of this area was necessary and desirable as a part of the research effort, a full treatment of this topic was not. Thus, the dissertation to a large degree took the intent of Congress as an objective which was assumed to be desirable. This permitted the study to focus upon the

Table 1.3. Summary of Response Rates to University Foundations Survey and Personal Correspondence

	Mailings Sent	Mailings Returned	Percentage Returned
University Foundations	100	40	40
Retiring Senators	7	5	71
Paul J. Fannin		x	
Hiram L. Fong		x	
Roman L. Hruska		x	
Mike Mansfield		0	
John O. Pastore		x	
Hugh Scott		. X	
Stuart Symington	1	0	
Presidents & Vice-Presidents	3	3	100
Gerald R. Ford		x	
Nelson A. Rockefeller		x	
Hubert H. Humphrey		x	

x = returned

Source: Survey of University Foundations and Correspondence to Selected Politicians.

^{0 =} not returned

appropriateness of the ordinary income provision to meet Congressional intent rather than the appropriateness of the intent itself.

- (2) The questionnaires were not designed to provide a random sampling of all charitable contributors or of all charitable recipients. Due to the nature of the study, it was more appropriate to use judgment samples in order to focus upon the specific groups of greatest interest. The samples composed significant percentages of those categories of individuals and institutions and, while the conclusions thus required the use of caution, the analysis provided evidence which was suggestive of results on a broad scale.
- (3) Since the information gathered through the use of the questionnaires was by necessity the opinions of the respondents, there was the danger that some responses might have been self-serving and so biased. Factors such as a feeling that one's motives are "above" mere tax implications might unconsciously influence the statements of donors. On the other hand, self interest might be served by indications that the tax law was an incentive and thus should be more liberal in the area of donations of this type. Given the stated purpose of the study, however, it seemed likely that any bias would be in the direction of overstating the impact of taxes on donation decisions.

Clarification of Terms

Several terms and phrases which were used in this study may be susceptible to divergent interpretation by different readers, may have peculiar nuances when used under varying circumstances or may have

technical meanings which require elucidation. Accordingly, they are defined here as an aid to the reader.

Ordinary Income Property

Ordinary income property is a term which is defined by the U.S. Department of Treasury. Ordinary income property is property which, if it were sold for its fair market value on the date of its charitable donation, would result in income which is either ordinary income or short-term capital gain. It includes such assets as a taxpayer's inventory, works of art in the hands of the creator, and corporate stock owned for nine months or less.

Owner-Created Property

Owner-created property, for the purposes of this study, is works of art still in the hands of the creating artist and papers, letters, and memoranda created by or for the taxpayer. Owner-created property is one of the major categories of ordinary income property. When discussed in the context of a contribution, such property will at times also be referred to as "donor-created property."

Philanthropic Institution

The term philanthropic institution means an organization donations to which are deductible as charitable contributions for federal income tax purposes. Other terms which are used interchangeably are "philanthropic organization," "charitable institution," and "charitable organization."

Philanthropy

As used in this paper, philanthropy means the attempt to promote human welfare in the United States by supporting an organization created to engage in religious, charitable, scientific, literary, or educational activities or activities for the prevention of cruelty to children or animals. It is synonymous with the scope of purposes which may make an organization qualified as the recipient of deductible donations. The term "charity" shall, as is common practice, have the same meaning.

Tax Expenditures

At times the term "tax expenditures" was used in speaking of the government's support of philanthropy through the charitable deduction. This was technically incorrect since there would be no government expenditure of funds. What would occur would be an opportunity cost relating to the revenue foregone. Speaking of it as an expenditure merely facilitated analogies which were important to draw as the deducation was discussed and analyzed.

. . . the term tax expenditures presumes nothing regarding the right of the government to claim each and every dollar. The tax expenditure approach asks a simpler question. Suppose you curtail some deduction or credit or exemption the tax code now provides; that would change federal revenue. The federal government could then use those revenues if it so desired to cut tax rates, to increase other tax deductions, or to increase expenditures.

Given the objectives which the deduction or the credit or the exemption is designed to achieve, is it better at achieving that objective than any of the other devices around? (Tax Institute of America 1972, pp. 229-30).

Organization of the Remainder of the Thesis

This study was divided into four parts. These basic components were a determination of Congressional intent with respect to charitable contributions, an analysis of the propriety of the provision which was revised by the Tax Reform Act of 1969, an investigation of the results of the 1969 amendment as it affected ordinary income property, and an evaluation of the alternative tax treatments which might be available.

Chapters 2 and 3 investigated Congressional intent in the area of charitable contributions in order to provide a framework from which to proceed. Chapter 2 explored the legislative history of the charitable contribution deduction prior to 1969. This investigation looked at the thinking of Congress as significant legislative changes in this provision were considered. Chapter 3 encompassed discussion of the amendment to the treatment of donations of ordinary income property which was a part of the Tax Reform Act of 1969. Described were the general circumstances and the Congressional attitude which contributed to the virtual elimination of the deductibility of ordinary income property donations.

Chapters 4 and 5 discussed the arguments which have been presented in favor of and in opposition to the charitable contribution deduction. Chapter 4 discussed the philosophical problem of whether there was justification for the government to support philanthropy. Additionally, the characteristics of ordinary income property were related to the question of government support. Also analyzed was the question of whether the tax system was the most appropriate means to

use as an incentive to make charitable gifts. Chapter 5 reviewed the disadvantages of the pre-1970 tax treatment of charitable contributions of ordinary income property and analyzed the effect of the 1969 Tax Reform Act in preventing unintended taxpayer benefits which had been possible under prior law.

Chapter 6 reported and interpreted the results of surveys which were conducted to determine the effects of the 1969 law changes on charitable contributions of ordinary income property. One survey focused upon donations of the materials of political personages, while the other related primarily to gifts of works of art.

Chapter 7 discussed alternatives within the tax system which might be used to achieve the purposes of Congress. The alternatives were evaluated according to their relative strengths and weaknesses for both donor-created works of art and the papers of political figures.

CHAPTER 2

PRE-1969 CONGRESSIONAL INTENT WITH RESPECT TO DONATIONS OF ORDINARY INCOME PROPERTY

The objective of Chapter 2 and Chapter 3 is to explain the intent of Congress in enacting the provisions of the law which apply to charitable contributions of ordinary income property. Such discussion is essential since the appropriateness of a provision is impossible to determine without an understanding of its purpose. Chapter 2 provides an overview of the historical development of the charitable deduction. Chapter 3 reviews the evolution of the Tax Reform Act of 1969. In each instance, the events are considered in terms of how they relate to Congressional intent.

An Historical Perspective to the Deduction for Charitable Contributions

The tax law is not an unchanging body of logic, but is instead the product of many individual political decisions. As a consequence, a specific area of the tax law is best understood when it is interpreted in light of the decision-making processes which accompanied each stage of its growth. Accordingly, this section presents the development of the charitable deduction to gain an understanding of the evolution of Congressional intent with respect to this provision.

The Origin of the Charitable Contribution Deduction

The deduction for charitable contributions has been a part of the federal income tax system almost since the advent of the first income tax law to follow the approval of the Sixteenth Amendment. It was suggested when the Tariff Act of 1913 was discussed on the floor of the House of Representatives. An amendment to allow such a deduction was proposed by Representative John J. Rogers of Massachusetts but was rejected by the House. This rejection was very much in keeping with the character of this first federal income tax of the twentieth century, a simple tax law with modest rates varying from one to seven percent.

Three years later the 1913 tax law was superceded by the Revenue Act of 1916. This act, slightly more ambitious than its predecessor, raised the maximum tax rate to fifteen percent of taxable income. Again, however, the tax base made no allowance for acts of philanthropy.

The War Revenue Act of 1917 increased the potential impact of the income tax by establishing a rate for income in the top tax bracket at sixty-seven percent. During Senate floor debate on the 1917 Act, an amendment to include charitable contribution deduction provision in the income tax law was presented by Senator Henry F. Hollis of New Hampshire. Senator Hollis viewed a deduction for charitable contributions as a necessity in time of war. He felt it essential to provide an environment that was hospitable to the continued growth of institutions which were dependent upon private contributions.

Comments by Senator Hollis and others showed a particular concern for the impact of the war upon private colleges. Enrollment was falling as college-age men were joining the armed services. This restricted the income which colleges derived from tuition and housing. There was also fear that contributions from private sources would shrink due to the effects of the wartime tax rates. Thus, private schools were experiencing decreasing cash inflows from each of their primary sources of revenue.

Senator Hollis indicated his reason for anticipating a decrease in charitable giving in the following explanation (U.S. Congress 1917a, p. 6728):

It will work in this way: Usually people contribute to charities and educational objects out of their surplus. After they have done everything else they want to do, after they have educated their children and traveled and spent their money on everything they really want or think they want, then if they have something left over, they will contribute it to a college or to the Red Cross or for some scientific purposes. Now, when war comes and we impose these very heavy taxes on incomes, that will be the first place where the wealthy men will be tempted to economize, namely, in donations to charity. They will say, "Charity begins at home."

As his statement clearly indicates, Senator Hollis regarded philanthropic giving as a residual activity, as a possible expenditure of excess funds.

Senator Hollis also viewed donations as distributions of income more so than distributions of wealth. This position was an essential aspect of his logic, since he spoke of an excess and an excess implies an inflow exceeding an outflow over a restricted time frame.

It further appears that Senator Hollis gave little thought to the area

of gifts of property. No mention was made of such gifts, or of how noncash donations were to be valued.

These simple, straight forward points of view concerning distribution of income continued for quite some time. As will be seen, they were significant in determining the direction of the evolution of the charitable contribution provision.

Another point made by Senator Hollis was one of efficiency, an argument necessitated by the large amount of money needed to carry on the war effort. Any funds diverted from direct application to finance the war had to be justified as being employed in a worthwhile cause. The efficiency of the charitable contribution deduction is an area of discussion that is timeless in its applicability; references to it surface each time the efficacy of some aspect of the charitable deduction is discussed. It received particular attention during the time that the Tax Reform Act of 1969 was being formulated.

Due to his belief that charitable giving should not be a complete substitute for the payment of taxes, Senator Hollis proposed that a limitation be placed on the amount of income which could be given and deducted. "I should not favor allowing any man to deduct all of his contributions to these objects from his income-tax return, but if we limit it to 20 percent of his income we cannot be doing much harm to the Public Treasury" (U.S. Congress 1917a, p. 6728). This limitation was written into the first charitable deduction, with the limit finally being set af fifteen percent of net income.

The provision that Congress ultimately chose to enact granted a deduction for:

Contributions or gifts actually made within the year to corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals, no part of the net income of which inures to the benefit of any private stockholder or individual, to an amount not in excess of fifteen per centum of the taxpayer's taxable net income as computed without the benefit of this paragraph (U.S. Congress 1917b, p. 330).

The charitable contribution deduction, then, was a war-oriented provision which was conceived from a Congressional desire to maintain the philanthropic support which existed before wartime revenue demands caused a substantial increase in tax rates. The provision was intended to encourage wealthy individuals to continue their donations to such organizations as private colleges and the Red Cross.

Little thought was given to the donor and the question of potential abuse. Congress felt that the percentage limit was an adequate safeguard against misuse, an assumption which was quite appropriate for that time. The position is particularly valid in dealing exclusively with nonproperty gifts out of current income.

Over the years, Congress took several steps which reduced the severity of the deduction limitation. None, however, were due to any modification of the original intent of Congress. The objective of the law remained consistent with that which was originally stated by Senator Hollis—to offer an incentive for charitable giving without permitting abuse of the tax system.

The Origin of the Unlimited Charitable Contribution Deduction

The first Congressional alteration to the charitable deduction provision was made in 1924. An exception to the general limitation on the allowable annual deduction, seemingly insignificant in its application, was enacted as a part of the Revenue Act of 1924. There was to be a general limit "... except that if in the taxable year and in each of the ten preceding taxable years the amount in all the above cases combined exceeds 90 per centum of the taxpayer's net income for each such year, as computed without the benefit of this paragraph, then to the full amount ..." the taxpayer could deduct his eligible contributions (U.S. Congress 1924, p. 271).

The entrance of the unlimited deduction for charitable contributions was quiet indeed, as the provision appeared without fanfare in the Senate bill. The senate Report noted the general reason for its passage in that body as "This provision is designed substantially to free from income taxation one who is habitually contributing to benevolent organizations amounts equalling virtually his entire income" (U.S. Congress, Senate, Committee on Finance 1924, p. 24). The House, which had nothing similar in its original bill, accepted it in compromise without dispute. A look at floor debate in 1924, in fact, showed that the issue of greatest concern was the constitutional power of the federal government to tax interest on the obligations of state and local government.

As originally intended, this provision was to benefit only a handful of individuals who were in unique circumstances. "This section was originally adopted as a special relief measure for one or a very few people who entered religious orders to which they gave all their income. For anyone with an effective tax rate well under 50 percent, only great generosity would permit qualification" (Smith 1968, p. 52). The top rate for individuals under the 1924 Act, it might be added, was about 50 percent.

At the time of enactment, such a provision must have appeared to have been without fault. If it is viewed under the assumption that donations are being made out of current earnings, then only a true philanthropist could qualify. Even if an individual were to pay half of his income in taxes, a figure in excess of what would have been paid by anybody under the 1924 tax law, such a taxpayer would still have to contribute eighty percent of the remainder to charitable organizations. Furthermore, this individual would have to do so for ten years. The provision apparently worked to the satisfaction of Congress because it remained in the law for many years before finally being removed by the 1969 Tax Reform Act.

The 1938 Proposal to Restrict Deductions of Property

The next significant legislative consideration of charitable contributions occurred in 1938 when it was proposed in the 75th Congress that charitable deductions be limited to the adjusted basis for all gifts of property. The bill which was passed by the House of

Representatives would have limited the deduction for charitable contributions of property to the lower of the adjusted basis of the property to the donor or the fair market value of the property at the time of the contribution. The Ways and Means Committee felt there to be "no justification in principle for the allowance of a deduction for the amount of unrealized appreciation which has never been included in taxable income" (U.S. Senate, House, Committee on Ways and Means 1938, p. 20).

This portion of the bill was stricken in the Senate by the Finance Committee and the provision remained deleted when the bills were reconciled by the Conference Committee. It, thus, was never enacted. The Senate Finance Committee, in its report, stated the following in regard to its decision (U.S. Congress, Senate, Committee on Finance 1938, p. 789).

Representations were made to the committee by officials of educational and charitable institutions that the effect of such a provision would be to discourage the making of charitable gifts in kind. The committee believes that charitable gifts generally ought to be encouraged and so has eliminated this provision of the House bill.

Thus, the general rule of fair market value as the measure of deductibility remained.

This aborted effort in 1938 was the only instance during the first fifty years of the charitable deduction when particular attention was given to noncash donations. From the remarks of the committees, it can be concluded that they recognized the unique privileges which were available to appreciated property. They regarded such advantages, however, as appropriate incentive devices and not as an area which was

being abused. Such an analysis may indeed have been true, for anyone who saw the potential of combining the unlimited charitable deduction provision to that of deducting appreciated property at its fair market value would have only recently met the qualifications for use of the unlimited deduction exception. Others could use the advantage, but only to the extent of fifteen percent of their income.

The Technical Adjustment of 1944

Following the deliberations of 1938, there were no major amendments to the charitable deduction rules until 1952. A technical adjustment was made to the contribution base in computing the deduction limitation during the 1940's. This adjustment did not reflect any policy change, however, but was merely an administrative response to changes in other areas of the income tax law.

Due to the great numbers of Americans who were faced with income taxes for the first time as a result of the high wartimes taxes, Congress looked for some manner to ease their acquaintance with an unfamiliar device. The Individual Income Tax Act of 1944 introduced the simplifying device of the standard deduction, and with it also the concept of adjusted gross income, into the Internal Revenue Code. This provided a convenient base for limiting deductions for charitable contributions, and the limit was set at fifteen percent of adjusted gross income.

The Loosening of the Limits in the 1950's

In 1952, the limit was raised to twenty percent. This was then expanded to thirty percent for contributions to specified types of organizations two years later. In regard to the increased limit, the Ways and Means Committee noted the financial problems that charitable institutions faced: "This amendment by your committee is designed to aid these institutions in obtaining the additional funds they need in view of their rising costs and the relatively low rates of return they are receiving on endowment funds" (U.S. Congress, House, Committee on Ways and Means 1954, p. 4050). At the same time, the requirements for eligibility for using the unlimited deduction were eased. The requirements now had to be met in the tax year and eight of the ten preceding years (rather than all ten).

The Introduction of Carryover

Finally, the 1964 law allowed a carryover for five years of contributions in excess of the thirty percent limit for those taxpayers not qualifying for the unlimited deduction. This converted what might otherwise have been a loss of tax benefit into a postponement of that benefit.

In providing what it felt to be an appropriate addition to the deduction privilege which attaches to charitable contributions, Congress inadvertently supplied the missing link to the chain of charitable deduction rules which would make gifts of appreciated property so attractive to many more people, and particularly to politicians.

While previously politicians would have to accept the inconvenience and

potential bad publicity from giving only a portion of their professional papers each year in order to maximize the amount of the deduction, it was now possible to donate all in one year and receive the tax benefits over a six-year period (the contribution year and the succeeding five years).

Summary

A history of the charitable contribution deduction shows that the original intent was to provide a governmental incentive in the tax system for wealthy persons to continue to make donations to charitable causes. Discussion in Congress showed that the particular concern was with maintaining voluntary support for private colleges. It also showed that Congress viewed contributions as being in the form of money which was currently earned and therefore subject to current income taxation.

It appears, however, that there has also been a conscious effort on the part of Congress to maintain a proper balance between charitable gifts and tax payments. A limit on the charitable contribution deduction was included so that it would not serve as a substitue for the payment of federal income taxes. It also seems evident that the charitable gifts provision of the tax law were not intended to provide tax savings in the absence of a charitable motive.

Over the years, this basic view of the charitable contributions provision has remained stable, with adjustments such as the unlimited deduction insertion, the raising of the general ceiling on charitable

deductions, and the enactment of the carryover provision all tending to emphasize the incentive aspect. Only the aborted attempt to limit the deduction for property in 1938 indicated any major concern on the part of Congress that this section was not functioning as intended.

CHAPTER 3

1969 CONGRESSIONAL INTENT WITH RESPECT TO DONATIONS OF ORDINARY INCOME PROPERTY

The tax Reform Act of 1969 marked a change in a fifty year pattern which Congress had established. The historical trend toward more liberal charitable contribution deduction provisions ended as Congress placed many restrictions upon charitable deduction benefits. Among the innovations which were enacted was the one which limited the deductibility of donations of ordinary income property to the adjusted basis of that property in the hands of the donor.

The purpose of this chapter is to review the intent of Congress in passing the limitation on the deductibility of ordinary income property. One of the sources which was researched to ascertain an indication of Congressional intent was the text of the appropriate committee reports which were prepared as the resolution moved through the Houses of Congress. Another group of legislative documents examined was the set of hearings of the committees involved. These contained questions and comments from committee members which were instructive in denoting their concerns in the area of charitable contributions. Professional literature was also reviewed to determine what tax scholars believed to be the intent of Congress.

Congressional Concern with Extreme Tax Benefit Situations

The primary reason that the deduction for donations of ordinary income property was limited was that Congress felt that this was one of the areas which offered tax benefits to individual taxpayers which were too generous to be tolerated. In particular, Congress was strongly concerned about the potential of an individual making a profit from a charitable contribution. The report of the Senate Finance Committee, for example, commented as follows after explaining the then-current tax rules for ordinary income property donations.

Thus, in some cases it actually is possible for a taxpayer to realize a greater after-tax profit by making a gift of appreciated property than by selling the property, paying the tax on the gain, and keeping the proceeds. This is true in the case of gifts of appreciated property which would result in ordinary income if sold, when the taxpayer is at the high marginal tax brackets and the cost basis for the ordinary income property is not a substantial percentage of the fair market value (U.S. Congress, Senate, Committee on Finance 1969b, p. 80).

Consider, for instance, the following example. A taxpayer is in the 70 percent tax bracket. The taxpayer owns a piece of ordinary income property which has a tax basis of \$10,000 and a fair market value of \$50,000. By donating this property to charity, a tax deduction of \$50,000 and a tax benefit of \$35,000 (\$50,000 times 70%) is received. If the property were sold, the taxpayer would receive \$50,000, pay a tax of \$28,000 (70% of \$40,000), and keep only \$22,000. Thus, under these circumstances an individual would be better off in the amount of \$13,000 (\$35,000 - \$22,000) by choosing to donate the property to charity.

Similar sentiments were expressed by the House Ways and Means

Committee in its report. It noted that the entire area of appreciated

property created questions of motivation, sacrifice, and equity.

Your committee does not believe the charitable contributions deduction was intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold and the proceeds were retained by the taxpayer. In cases where the tax saving is so large, it is not clear how much charitable motivation actually remains. It appears that the Government, in fact, is almost the sole contributor to the charity. Moreover, an unwarranted benefit is allowed these taxpayers, who usually are in the very high income brackets (U.S. Congress, House, Committee on Ways and Means 1969b, p. 54).

Congressional Concern with Tax Avoidance by the Wealthy

The environment in which the 1969 Tax Reform Act was developed adds further evidence of the concern of Congress with undue tax benefits. The genesis of the Tax Reform Act occurred in December 1968, at which time the Secretary of the Treasury released to the public the results of a study regarding tax returns for the year 1966. The tax return information which it contained caught the eye of the press and the attention of the American public. Opinion was particularly aroused by the announcement that in 1966, there were 154 individuals who had adjusted gross incomes in excess of \$200,000 and yet paid no federal income tax for that year.

As a result of public opinion, the House Ways and Means Committee began tax reform hearings in February of 1969. When the Committee completed the hearings and its task of presenting a tax bill to the House, ample note was made of the situation stated in the report of the Treasury Department.

From time to time, since the enactment of the present income tax, over 50 years ago, various tax incentives or preferences have been added to the internal revenue laws. Increasingly, in recent years taxpayers with substantial incomes have found ways of gaining tax advantages from provisions placed in the code primarily to aid some limited segment of the economy. In fact, in many cases they have found ways to pile one advantage on top of another. Your committee believes that this is an intolerable situation. It should not have been possible for 154 individuals with adjusted gross incomes of \$200,00 or more to pay no income tax. Ours is primarily a self-assessment sys-If taxpayers are generally to pay their taxes on a voluntary basis they must feel that these taxes are fair. Moreover, only by sharing the tax burden on a fair basis is it possible to keep the tax burden at a level which is tolerable for all taxpayers (U.S. Congress, House, Committee on Ways and Means 1969b, p. 1).

The concern of Congress with the means by which high income individuals were able to avoid or materially reduce their taxes was apparent throughout the hearings and reports, as frequent reference was made to those situations.

Many changes were made in the tax law as Congress sought to eliminate objectionable preferences and insure that high income individuals were required to pay a fair share of the nation's tax burden. Such measures as the introduction of the minimum tax on tax preferences and the limitations on the investment interest expense deduction were taken in order to meet this goal. The charitable contributions amendments, including the ordinary income property provision, were also consistent with this objective.

Charitable Contributions of Ordinary Income Property

It is not surprising the charitable contributions of ordinary income property received a great deal of attention during the drafting of the tax reform legislation. This careful scrutiny can be attributed to the fact that for the 154 high income nontaxpayers "the single most important itemized deduction was the charitable contribution deduction . . ." (U.S. Congress, House, Committee on Ways and Means 1969b, p. 9). Furthermore, seventy percent of such contributions were in the form of property, with most of the amount representing appreciation in value which had never been taxed.

Other evidence of the concern of Congress with undesirable tax incentives was given through statements about the general scope of interest for the act as a whole. When the Senate Finance Committee described its purposes in amending the tax law, it stated this to be one of its two primary objectives.

In the second category of amendments the committee seeks to achieve a better balance between the equity considerations for taxing a number of items regarded as tax preferences and the economic effects of such taxation. The basic principle underlying the committee's decision in this respect is that preferences should be eliminated or substantially curtailed unless there are overriding considerations which would have a serious impact upon the economy (U.S. Congress, Senate, Committee on Finance 1969b, pp. 2-3).

As the various comments of the committee showed, then, the opportunity to profit from charitable contributions resulted in two problems which required a law change. The first problem was one of equity. It was said that such a situation removed any charity from the charitable contribution. It might well be said that the taxpayer

in the earlier example donated his taxes to charity and also received a \$13,000 subsidy from the government for doing so. The question becomes one of who in fact is the donor—is it the taxpayer or has the economic forbearance been shifted to the Federal Treasury?

The second problem was taxpayer morale. The federal tax system still places a great deal of emphasis upon the doctrine of voluntary compliance. The effective administration of the tax system is therefore dependent upon the attitude of the public toward meeting its legal obligation. If the public regarded the tax system as patently unfair, there would be a danger that "following the rules" might be regarded as the path of fools, and the entire system could erode. Such loss of confidence would lead to either a loss of tax revenues to the federal government or to an increase in the cost of administration of the tax system. Either way, it would represent an indirect loss to the system abetted by the charitable deduction provisions.

A similar reason for Congressional actions which would apply to ordinary income property was the difficulty of valuing many of the assets which fall within the category. The Ways and Means Committee made specific reference to both art objects and personal papers in its discussion of the problems under the prior law.

Works of art . . . are one of the types of items which frequently are given to charities, and in which there often is a substantial amount of appreciation. The large amount of appreciation in many cases arises from the fact that the work of art is a product of the donor's own efforts (as are collections of papers in many cases). Works of art are very difficult to value and it appears likely that in some cases they may have been overvalued for purposes of determining the charitable contribution deduction (U.S. Congress, House, Committee on Ways and Means 1969b, p. 55).

It was again a problem of abuse of a tax preference, in this case because of the administrative difficulties inherent in the provision.

Evidence did not indicate that Congress was moving away from its traditional feeling that philanthropic institutions were valuable organizations which were to be encouraged. Mr. Edwin S. Cohen, speaking as Assistant Secretary of the Treasury for Tax Policy, has stated that Congress still placed the same degree of importance upon providing an incentive for support of the nonprofit private sector of the economy.

It seems to me that the Congress made the decision . . . that while we wanted to sponsor philanthropy, and we have tried to continue the encouragement for charitable giving, . . . it ought not to be used in the future as a means of permitting a person to wipe out entirely, . . . all his responsibility for contributing to the cost of the United States government" (Tax Institute of America 1972, pp. 44-45).

He indicated a continuing Congressional feeling that the practice of philanthropy should be supported just as it had been in the past. The real intent was to curb undesirable results which were occurring on the donor side of the equation. Mr. Cohen spoke specifically of the problem of individuals avoiding all tax liability through judicious use of the deduction for charitable donations. But, while he did restrict his comment to the narrow and publicly visible issue of total tax avoidance, it might be extrapolated from his statement that he viewed Congressional intent as being to prevent general donor misuse of the tax benefits of charitable giving.

Analyses of the many changes in this area of charitable organizations have led some tax scholars to determine that Congress intended to create as little negative impact as possible on public charitable organizations. Mr. Stanley S. Surrey indicated in remarks at a professional seminar that such a determination was well accepted in the professional tax community.

The morning session indicated . . . that there was no real effect from the 1969 act on the volume of giving to public charities. Of course, it would be strange if there were an effect on such giving, since the act was not planned to have any effect on giving to public charities and Congress was careful to see that the act would not have any such effect. So the morning's discussion did not disclose anything essentially new (Tax Institute of America 1972, p. 131).

Changes were not made with the intention of reducing the amount of giving to tax-exempt institutions. They were rather an effort by Congress to discontinue providing a government subsidy for transactions which primarily benefited private individuals.

Mr. Surrey concluded that there was no effect on public charities as a group. He did not, however, make any statements about subdivisions of that group. It is possible for a few people to go hungry in a well-to-do community because the average person tends to blur the extremes, and likewise it is possible that while the preponderance of institutions are living life as usual, a few may be starving to death.

This issue is particularly relevant as it relates to institutions which would be most affected by the ordinary income property donation rules. If those rules had a strongly negative impact on contributions of such property, then they can be expected to have a significant effect on the growth and development of institutions which rely heavily upon contributions of that type. Art museums could be substantially affected, for instance, to the degree that they rely upon donations of art work by the creators rather than donations from collectors.

Summary

Despite the many changes which were made over the years following the original enactment of the charitable contribution deduction provision, there were no major modifications in the intent of Congress in the area of charitable giving. The purpose remained to provide a tax incentive for private support of philanthropy without creating opportunities for taxpayer abuse. The change, as an investigation into the cause of the Congressional actions showed, was in its attitude toward the effectiveness with which charitable provisions met that intent.

There was, in the judgment of Congress, an abuse of—or at least a misdirection of—benefits that had resulted on the donor side of the equation. Donors developed sufficient tax sophistication so that they were able to structure events in a manner which proved extremely beneficial in terms of tax liability reduction. The structure of their charitable contributions was such that Congress could no longer justify the tax advantages.

Congressional intent with respect to the charitable contributions provision may be captured in a comment by Senator Jack Miller of Iowa during the Congressional hearings (U.S. Congress, Senate, Committee on Finance 1969a, p. 2195).

Understand that we have the problem, on the one hand, of continuing to encourage charitable giving, which is a long-standing policy of our Government. . . . On the other hand, you have the problem . . . of encouraging the voluntariness of our tax assessments system, and public opinion is becoming quite aggravated especially when the public reads in newspapers and magazines that a few taxpayers, or a few individuals, I should say, receive a large amount of income but pay very little or no income tax. That was the genesis of the House action.

The Tax Reform Act of 1969, then, was an effort by Congress to adjust the tax treatment given to charitable contributions of ordinary income property so that it would operate in a manner which was consistent with the Congressional intent of providing an incentive to give which did not also provide an opportunity for abuse.

CHAPTER 4

AN ANALYSIS OF THE USE OF THE FEDERAL INCOME TAX SYSTEM TO ENCOURAGE SUPPORT OF PHILANTHROPIC INSTITUTIONS

The ordinary income property rules can be properly assessed only when they are viewed in the perspective of the entire area of the tax treatment of philanthropic contributions. Chapters 2 and 3 provided the foundation for an overview of the deduction for charitable donations by reviewing the historical evolution of the charitable provisions, with emphasis being placed upon Congressional intent. Chapter 4 continues this approach by discussing the basis upon which proponents justify the decision of Congress to provide government support for philanthropic institutions by means of tax provisions. This discussion provides a more thorough understanding of the underlying reasoning of Congressional intent by analyzing the issues upon which it is based and thereby creates a better ability to relate it to results.

For convenience, consideration of a tax provision for charitable contributions may be divided into three categories. The first area involves the principle of the government providing a financial incentive. It must be determined whether or not the federal government should provide taxpayers with a discretionary means of reducing their tax liabilities and the revenues of the government. Since discretionary citizen control over a portion of government revenues does not

involve serious controversy, it is given limited treatment. The second concern is with the desirability of using the federal Treasury as a means of supporting the area of philanthropy and more specifically ordinary income property. The next portion of the chapter is thus devoted to the issue of whether the federal government should be involved in the field of philanthropy. Particular attention is given to the relevance of the character of donor-created property to this issue. Is this particular area one which warrants such government assistance? The third question involves whether a tax incentive for charitable donations is an effective tool. The tax incentive must be evaluated in terms of its success in encouraging gifts as opposed to the success which would be expected under available alternatives. Accordingly, the balance of the chapter analyzes the propriety of using the income tax system as the vehicle for providing federal support to philanthropic institutions.

Discretionary Tax Reductions

While the thought of permitting taxpayers to reduce their tax liabilities through voluntary action might appear unwise, analysis suggested the potential benefits of such an approach. The underlying philosophy was that the tax system was being used to reward desired behavior. The taxpayer was encouraged to act in approved ways through a tax benefit reward system.

Trading off tax revenues against socially desirable activities was one means of applying cost-benefit methods within the government.

The method itself was credible and had been used many times within and also outside the tax system. Among the examples of such behavior modification were the investment tax credit to encourage the business purchase of equipment and the farmer subsidies for allowing land to remain idle. Given the credence of the means, it was the end which had to be justified. The first problem, then, was really at the next level of consideration. Was it desirable to support philanthropic institutions?

The Question of Government Support of Charity

The issue of supporting the charitable sector with government funds actually required the consideration of two different issues. The first problem centered around the determination of the desirability of supporting such institutions at all. If that matter was satisfactorily resolved, the second problem was to explain why the government should participate in the support process.

Desirability of Philanthropic Institutions

The case in defense of philanthropic organizations rested upon the assumption that society accepted them as beneficial in carrying out desirable functions within the nation and thus as appropriate recipients of the financial aid which was necessary to their continued existence. Furthermore, it could be contended that society had made a collective judgment that charities, religious organizations, hospitals, art museums, and other such entities made significant contributions to

the quality of life. The continuation of the nonprofit sector was therefore not open to rigorous proof, but rather was subject to the sentiment of public opinion. There appeared to be no strong opposition to the continued existence of the nonprofit sector in American society.

Given that the general area of philanthropy was deemed to be worthy of support, the relevant area of interest became the more specific question of the value of ordinary income property. Accordingly, this section analyzes the character of property of that type. Attention is first addressed to works of art, their characteristics, and the importance of their donation to art museums. The nature of the papers of political figures is then discussed.

Works of Art

Much of the property which is ordinary income property has the quality of uniqueness. If one person or a group of individuals should have rights to the exclusive use and enjoyment of such property, then all others suffer since there is nothing which would serve as a complete substitute for the asset to which they are denied access. Works of art were often cited as examples of such property during hearings preceding the 1969 Tax Reform Act.

This quality indicates a significant argument in support of incentives to place such property in public ownership. S. Dillon Ripley, in a letter on behalf of the Smithsonian Institution, brought this point to the attention of the Finance Committee.

The Smithsonian's national collection, a priceless record of our natural and cultural history, owe their existence to more than a century of private gifts of tangible personal property. No amount of public funds could replace the treasures which the Smithsonian and the Nation's museums have received from individual citizens. On the other hand, tax incentives have played a major role in transferring objects of museum quality and national significance from private hands to museums accessible to the public (U.S. Congress, Senate, Committee on Finance 1969a, p. 2495).

The above quotation, since it encompassed all gifts of tangible personal proerty, is a comprehensive and forceful statement of the issue of public access. Another letter to Congress, this one by Monroe Wheeler for The Committee of Friends of the Museum of Modern Art, focused upon art work and its unique importance to the museum community.

Today's museum is not merely a storehouse for the treasures of the past. It has become a vital force in the development and dissemination of the flourishing arts of our time, providing the public, scholars and artists with the opportunity to see, enjoy and study current work and work of the recent past. To such a museum it is essential that living artists be encouraged to contribute works of their own creation (U.S. Congress, Senate, Committee on Finance 1969a, p. 2629).

Finally, Mr. Kyran M. McGrath, director of the American Association of Museums, indicated to the Committee on Ways and Means his concern that museums would be prevented from effectively carrying out their primary function by the proposed law change. He called the limiting of a charitable contribution deduction to the tax basis of the property to the donor a proposal which "strikes at the hearts of museums."

. . . their most vital functions of preservation, interpretation, and exhibition would be threatened. Again, such a proposal stems from a basic misconception of the public and educational services performed by museums. The very essence of a museum is its ability to preserve and display in an intelligible fashion the artistic, historic, and scientific heritage of the society in which we live. To weaken or destroy the museums' ability to perform this service would be tantamount to weakening the cultural and educational foundation on which our society rests (U.S. Congress, House, Committee on Ways and Means 1969a, p. 1443).

As exemplified by these statements, then, the argument which has been offered for the desirability of works of art is that they are unique assets which add to the heritage of society.

Political Papers

While there were a number of witnesses before Congress who testified to the value and importance of art objects, none spoke of the worth of the personal papers of well-known political figures. Much of what was said about works of art, and in particular the comments about the uniqueness, would seem to have been equally applicable to political papers. There were, however, other facts that related especially to such items.

In an effort to gather information about political papers, the second part of the university foundations questionnaire asked the respondent to discuss how worthwhile the personal papers of political figures were as archival material. The questionnaire referred to two issues involving the value of such materials. One issue was whether much of this type of material was little more than a storage burden to the institution, of no real interest to the historical scholar. The other was whether there was a significant bias problem with donorselected materials. The results of this question are summarized in Table 4.1.

Table 4.1. Responses of University Foundations Regarding the Value of Political Papers

Response	Percentage	
Positive	52.5%	
Situational	12.5%	
egative	17.5%	
o Opinion Express	17.5%	

Source: Survey of University Foundations; summary of responses to the statement "Discuss how worthwhile the personal papers of political figures are as archival material."

As Table 4.1 shows, university foundations had a strong positive attitude toward the value of the papers of politicians. Fifty-five percent of the respondents made comments which were favorable in nature, while another 12.5 percent indicated that the value depended upon the circumstances, particularly the status of the person who created the materials. 17.5 percent of the comments were negative with respect to political materials.

The responses which indicated that political papers were worthwhile pointed to the historical research value as the primary reason for their worth. Alluding to the unique insight that any paper might provide, for example, one respondent noted the increased value that an item might develop over time.

Personal papers of political figures are a bit of a burden. They tend to include a great deal of marginal interest to pressent scholars and they are voluminous. I feel, however, that they have a certain value as cultural history if nothing else and that in the future their usefulness will be considerable. I'd be delighted if I had every piece of paper that Sir Robert Walpole ever set pen to, why not the same delight (in 200 years) for the papers of Henry Kissinger?

Another respondent also emphasized the need to evaluate in terms of future years in order to properly appraise the merit of political papers.

There seems to me to be no room for doubt about the value of personal papers of political figures as archival material. In many instances a complete reinterpretation of an administration or of the historical process is affected by the study of such papers. One should always bear in mind that it is difficult if not impossible to decide now what may be important and relevant a century from now. We tend sometimes to consider current papers of little value, but one only has to remember that similar collections from figures in the seventeenth or eighteenth century would provide a wealth of research material and would indeed be considered of great value.

Even those who were positive in their comments about political materials, however, tempered their statements with indications that not all such material was useful. A common assertion, as exemplified by the following comment, was that the value of materials depended upon the importance of the political figure.

The personal papers of political figures are worthwhile archival material. How worthwhile and how much is worthwhile depends upon archival appraisal, the significance of the figure and the location and resources of the archival repository.

Another respondent emphasized the necessity of having a formal program within which to evaluate potential donations.

I don't think that any University can indiscriminately accept the personal papers of any and every politician who wishes to memorialize himself. I think that the acceptance of papers of political figures has to be within some over-all plan with the possible exception of those few rare incidents where the politician has become a key participant in legislation affecting local, state or federal government.

One responding party indicated that the papers of public officials were very worthwhile, but that the process of acquiring them was troublesome. The individual observed through the following example that the acquisition process was not always a pleasant experience.

The biggest problem we have had with politicians' papers is that, being moved by a desire for public exposure, they get as much mileage out of the gift as possible, including announcing open access to the papers "immediately" without taking cognizance of the need for processing. 250 feet of papers takes a while to prepare for use, especially when they are in great disorder at the time of deposit. One of our donors had a great fund-raising dinner to get money for processing (which I thought very obliging of him indeed) and announced at the dinner that all would be ready for use in a month. He raised very little money which lasted only three months and provided only for the beginning of the job.

The money ran out, the papers are still not processed, and the bad public relations has come upon the library rather than the politician. This good gentleman also had a junior colleague to whom he turned over the handling of the transfer of the papers and who has certain historical theories which he wants to have mirrored in the arrangement and retention of certain of the papers. That has not been a pretty battle.

In short, politician's papers are okay but politicians are not so great.

The storage burden problem, as Table 4.2 suggests, may provide a clue as to the disenchantment which some institutions have for political papers. Those who felt that the burden of storage was or was becoming a major problem composed 17.5 percent of the total, 31.8 percent of those who commented directly to this issue, and 100 percent of those who were generally negative in their comments concerning the value of the papers of politicians suggested that there was some feeling that much of the material was not of historical consequence, adding little if anything to human knowledge.

Table 4.2. Responses of University Foundations Regarding the Burden of Storing Political Papers

Response	Percentage	
Not a Problem in Practice	37.5%	
No Specific Comment	45.0%	
It is Becoming a Problem	17.5%	

Source: Survey of University Foundations; summary of responses to the question, "Is much of this material of such a nature as to be little more than a storage burden to the recipient institution?"

While there was no denying that the storage issue could not be ignored, the majority of respondents tended to minimize it by stressing proper acquisition and sorting procedures. One respondent, for example, replied as follows: "As to storage problems, materials of no research usefulness are either discarded or returned to the donor, at the donor's option. Usually the donor has no more need for fifty pounds of miscellaneous scrap paper than does the library."

The following response was typical of those which did not perceive of storage as a significant problem.

We believe that the personal papers of political figures to be of significant research value. Obviously such papers can be a "storage burden," but we believe such a burden is far more than offset if the politician in question is of more than minor interest either at the state or national level. We always reserve the right to process the papers as we see fit. This could mean disposal of unimportant material, but so far as I know no such disposals have ever occurred.

Several respondents mentioned that the burden of storage space was only a part of the administrative demand of modern political papers. The following response, for example, noted that large quantities of materials might be a hardship due to the time needed in processing.

Many of the papers of a modern politician consist of routine files about trivia. So much of current policy-making is handled by telephone calls and in personal conferences that even very bulky files may have low research value. Processing the papers so thoroughly that readers may quickly locate the materials of interest to them takes an enormous amount of staff time.

Bladming around warra

Archivists have not consigned themselves to the problem of storage. One respondent, for example, noted that one avenue to which institutions may turn would be to use some reduction process as a means of preserving documents which were determined to be of minor importance.

The most significant papers would be reduced as well, but the original forms would also be retained.

Another response from a university foundation indicated that progress was being made in developing more sophisticated means of sorting through bulky document collections.

Archivists are now, however, experimenting with ways in which to intelligently weed files of routine or low information content. Our Curator is now experimenting with random sampling techniques applied to constituent correspondence, the largest bulk and problem of modern political papers, reducing the bulk down to 20% or less of the original.

With respect to Congressional materials, Mr. Robert M. Warner, Director of the Michigan Historical Collections of the University of Michigan, suggested in a paper which he delivered before the Public Documents Commission that a coordinated system was needed to oversee their collection and care.

The problem . . . is to work out a rational system which will bring about the systematic elimination of substantial parts of the documentary material created, otherwise these collections will be terribly expensive to maintain but, even sadder, will seldom be used. Perhaps the best way to approach the matter would be for the Library of Congress or an independent national archival agency to work out a uniform records management advisory service and system for members of Congress. This service could recommend file schemes and actually serve as archival advisors, so that from the time the records are created they are managed (Warner, pp. 8-9).

The essence of the responses was that the potential problems associated with bulky collections of personal papers have grown in importance in recent times, but that as a practical matter the issue has so far been overcome by prudence in the procedures of acquisition and processing. Comments further suggested that the matter of bulk

was being studied by archivists and that they considered it to be a problem which might be resolved by appropriate techniques developed from within that profession.

The potential of bias was not regarded as a problem of practical significance by responding foundations. This can be seen from the summary of responses shown in Table 4.3. Bias was either not addressed or was felt to be noncritical by ninety-five percent of respondents, while even the five percent who acknowledged such a problem would only go so far as to say that bias may be a problem at some times. An example of the type of comments received was the following: "In our experience, donors generally do not try to pre-select materials. If there is an inclination to do so, we dissuade the donor, offering to put under seal for a reasonable time any sensitive items."

Table 4.3. Responses of University Foundations Regarding the Potential Bias of Political Papers

Response	Percentage	
No Special Problem for Donated Papers	40%	
No Specific Comment	55%	
May be a Problem Sometimes	5%	

Source: Survey of University Foundations; summary of responses to the question, "Is there a potential problem of bias since the donor selects the materials to be contributed?"

Another respondent gave a particularly good statement of the consensus of opinion as to the importance of the threat of bias.

You mentioned the potential problem of bias in the selection of material given to a repository. This is a possibility, of course, but it is one the scholar must take into account in the handling of all personal papers. Any donor, either creator of papers or a descendant, may have removed sensitive material or items that were thought to reflect discredit on the creator of the papers. This sort of censorship is also possible to some extent in public records, since many office-holders have opportunity to remove matierals from files before leaving office. Even more basic is the fact the official often has the opportunity to decide whether to create a record by letter, memorandum, or tape, or to transact the business by telephone or in person. These are problems inherent in all historical scholarship and do not pertain solely to the papers of recent political figures.

Bias, then, was not seen as a problem which was peculiar to or particularly acute for donated papers.

Desirability of Government Support

There were two arguments advanced as justifying the suppport of the federal government for donations to philanthropy. One was based on the historical success which museums in the United States have experienced in securing acquisitions. The other centered around the advantages of mutual cooperation between the public and private sectors with respect to philanthropic activities.

The appropriateness of government indirect assistance was suggested by a comparison of the historical development of museums and libraries in the United States with that of their European counterparts. The early institutions in America, noted Perry T. Rathbone, president of the Association of Art Museum Directors, were founded when there was no federal income tax to act as a constraint.

The first museums in this country in Philadelphia, Baltimore, Hartford, Boston, and New York were the result of private responsibility and individual generosity. In great part, this was possible because of the large incomes and fortunes that were generated before the introduction of the income tax in 1913 (U.S. Congress, Senate, Committee on Finance 1969a, p. 1241).

As discussed in Chapter 2, the deduction for charitable contributions was introduced into the tax system very early. By this means, proponents maintain, the tax structure was adapted so that the incentive for private giving would remain undiminished in America. As evidence of the success and value of the tax provisions, Mr. Rathbone added that during the past 50 years museum collections in America have grown at a far more rapid rate than have those in Europe. This same point was also made by Herman W. Liebert of the Beinecke Rare Book and Manuscript Library at Yale University. Mr. Liebert noted pridefully that "the collections of American libraries and museums have in recent years grown at such a rate as is not equaled, except by conquest or theft, in the whole history of the world" (U.S. Congress, Senate, Committee on Finance 1969a, p. 6038).

The recent history of the European institutions showed that they have not met with the same success. Their treasures were primarily collected quite some time ago. Mr. Rathbone stated "The great museums of Europe . . . performed the vast majority of their collecting much more than a century ago by nationalizing private, princely, royal or imperial collections" (U.S. Congress, Senate, Committee on Finance 1969a, p. 2141). Progress has not been great of late, however,

a fact which Mr. Liebert linked to the absence of governmental support such as has been given by the United States.

There are no similar provisions in the tax laws of foreign countries. And, as a result, libraries and museums there are starving. One of the world's greatest libraries, the Bodleian Library at Oxford University, depends on major help from American friends who believe in the growth of libraries everywhere (U.S. Congress, Senate, Committee on Finance 1969a, p. 6038).

Advantages of Cooperation. Proponents of government support maintained that the historical success of American philanthropic institutions was not just the result of good fortune. The promotion of philanthropy through efforts was regarded as a logical system which draws upon the strengths of each sector. The functions of philanthropic organizations were viewed as semi-public goods which could best be provided by private institutions, with such a system being of sufficient value to the public sector that the existence of the system should be supported by that sector.

Public goods theory stipulates that the justification for the provision of a good outside of the private sector is the quality of nonexcludability. That is, the use of a good by one person or group of persons results in free benefits (called externalities) to others. Public education may be taken as an example. The primary beneficiaries of an educational system, of course, are the students who graduate from the system. They have the advantage of the knowledge and skills which they have acquired. The rest of society indirectly benefits to the extent that the quality of life is improved through the application of

the learning which takes place in its educational institutions.

Additionally, there is presumably a certain amount of value to living in an educated society. With such a spillover of benefits, then, government support of education may be justified. The market sector fails because individuals cannot be expected to pay for benefits which they receive for free, while those who receive the education would be willing to pay only to the degree that they are benefited and not for the good of another. If the quantity of education provided were left to the mechanisms of the market place, education would be a good which would likely be underallocated. Similar lines of reasoning have been applied to such other activities within the scope of philanthropy as welfare, religion and culture.

The argument supporting pluralism as a reason to encourage private donations to charity was a common one and one which seemed to have no opposition. As exemplified by a statement by Mr. John D. Rockefeller to the Senate Finance Committee, the essence of the justification was the desirability that the objectives of society be jointly pursued by both the public and the private sectors. "Our pluralistic system, in which philanthropy is a major element, is almost unique in the world. Instead of all social problems falling to the government, our system makes it possible for private citizens and private organizations to help solve them" (U.S. Congress, Senate, Committee on Finance 1969a, p. 2018).

To some parties, the value of the charitable contribution deduction did not even rest upon its stimulation of philanthropic giving. T. Willard Hunter, in writing of the significance of this provision, emphasized what he regarded as a pervasive justification for its continuance.

The deductions for philanthropic contributions, whatever they may do in stimulating specific gifts, are, in my opinion, important to America's soul. The case for their continuance on the statute books is wider and deeper than their effect on the channeling of dollars. They are an expression of the national will that voluntary responsibility is essential to the fabric of our values (Hunter 1968, p. 145).

A more specific justification for a partnership between the public and private sectors in providing social services was the economic reasoning which stated that each sector has limitations and strengths so that each is able to most efficiently deliver some of the services which are needed. Dr. Ernest L. Wilinson of The American Association of Independent College and University Presidents suggested this to the Committee on Finance. "The reason why Congress has historically favored charitable contributions is because it has recognized that the same amount of good that is done with these contributions would cost more if it were done by the government itself with tax dollars" (U.S. Congress, Senate, Committee on Finance 1969a, p. 2064).

The defense that a liberal tax treatment for charitable contributions was an efficient means of providing socially desirable services appeared often during the 1969 Congressional hearings. If the tax incentive were removed, the government would have to choose between having fewer services provided or subsidizing those services through tax revenues. Mr. Lawrence M. Stone, for example, viewed this as the primary reason for tax privileges in this area.

The principal justification for tax benefits granted to these organizations and their donors should be that they relieve the government of what might otherwise be necessary governmental functions which are better accomplished in this fashion than they would be through direct governmental expenditures or grants (U.S. Congress, House, Committee on Ways and Means 1969a, p. 173).

Mr. Winslow Carlton of The National Assembly for Social Policy & Development, Inc., stressed the potential of this unfortunate choice.

Without such gifts and the inspiration and leadership which they provide in the stimulation of smaller gifts, many publicly supported organizations could not continue to provide vital services to the same degree as they presently do. Therefore, either those services would not be rendered—which could have a devastating effect—or the Government would assume the obligation to perform them, thereby helping to erode the pluralistic structure of philanthropy in America (U.S. Congress, House, Committee on Ways and Means 1969a, p. 1668).

Removal of the support for philanthropic activities may severely damage or eliminate institutions which have made long-range plans based upon expected revenue from donations. Institutions such as private universities and museums which have grown under the shelter of a favorable tax system and which have operated effectively may shrink or disappear. The underlying problem is that removal of the institution (or a reduction in its scope) does not remove the need, but may make satisfying the need more expensive.

The Question of Government Support of Charity Through Tax Laws

The case in support of encouraging donations to philanthropic institutions by means of tax incentives has not been universally accepted. A number of tax experts have suggested that an incentive which was unrelated to the tax system might be preferable. Those scholars

who were critical of using tax provisions to encourage charitable giving generally proposed that it be replaced with a system of matching federal grants. Such a program would be based upon government payments directly to charitable organizations, with the size of the payments being determined by the amounts which were contributed to such institutions from the private sector. One advocate for a matching grant system was Professor Lawrence M. Stone of the School of Law of the University of California, Berkeley. Specifically, he recommended such a proposal as follows:

Possibly a better approach than a tax credit or deduction would be a matching payment plan under which the government would automatically match gifts to these organizations at some fixed ratio. The matching plan would have the advantage over a tax incentive of having all governmental support end up in the hands of the organizations. It is very likely that this would be the most efficient means of government support, if administratively feasible (U.S. Congress, House, Committee on Ways and Means 1969a, pp. 175-176).

It is not clear that government support under a matching system would reach the institution any more than it would under a tax system. An example will best serve to present the point. Assume that an individual has an income of y and a taxable income of t (excluding any effect from charitable contributions). Assume also a flat tax rate of r. (This is not a critical assumption since the comparison is between programs inside of and outside of the tax system, and not with any specific tax provision. The purpose is to simplify discussion.) If no gifts to charity are made, the available income (a) is defined as

$$a = y - (t)(r)$$
.

Now suppose the taxpayer wishes to provide amount c to a charity and that he can do so through a contribution which is tax deductible. The taxable income will now to be t-c, and the tax (t-c)r. The available income after reduction for contributions and taxes would thus be

$$a = y - c - (t - c)r$$
,

which can be rewritten as

$$a = y - (t)(r) - c + (c)(r)$$
.

Thus, the cost of the gift to the taxpayer would be c - (c)(r).

If it is again assumed that an individual wishes to arrange to provide amount c to the institution, but that the government support is provided by matching at a rate of p percent of the individual's contribution, the individual would actually contribute x, where

$$x = c - (x)(p);$$

that is, the full amount received by the charitable institution less the government's portion. The individual's income after contributions would then be

$$a = y - (t)(r) - x$$
, or
 $a = y - (t)(r) - c + (x)(p)$,

so that the reduction in income available for other purposes would be c - (x)(p).

If the systems can be made consistent, it would require that the cost to the individual be the same for situations giving the same benefit to the institutions. Accordingly, a mathematical identity may be developed in which the individual sacrifices are the same. This would give the equation

$$c - (c)(r) = c - (x)(p).$$

This can then be rewritten and simplified as follows:

$$(c)(r) = (x)(p)$$

$$(c)(r) = \frac{c}{1+p} \cdot p$$

$$r = \frac{p}{1+p}$$

$$\frac{1}{r} = \frac{1+p}{p}$$

$$\frac{1}{r} = \frac{1}{p} + 1$$

$$\frac{1}{r} - 1 = \frac{1}{p}$$

$$\frac{1-r}{r} = \frac{1}{p}$$

As this equation indicates, there is a formula which allows any matching program to be converted into a tax system program (or vice versa), with the relative individual and government contributions being the same.

To illustrate this conclusion numerically, assume that an individual who is in the 20 percent tax bracket wishes to arrange to provide \$100 to a charitable organization. The taxpayer writes a check for \$100, takes a tax deduction of \$100, and pays taxes which are \$20 less than they would have been in the absence of the contribution.

The result is that the institution has received \$100, while the individual will have a net cost of \$80 (\$100 - \$20) and there will be a revenue loss of \$20 to the federal government.

Now assume that the tax deduction is replaced by a system whereby the government will match 25 percent of private contributions. Again assume that the individual wishes to arrange to provide \$100 to a charitable organization. Under these conditions, the individual writes a check for \$80. The government will also write a check, the amount being for 25 percent of \$80, or \$20. The result again is that the institution has received \$100, while the net costs to the individual and to the government are \$80 and \$20, respectively.

As the example indicates, in each case the individual is able to generate a \$100 benefit to the institution at a personal cost of \$80. The other \$20 is supplied by the government. Thus, while the processes are different in the mechanics of operation, it is not accurate to distinguish between them on the basis of how much support reaches the institution and how much reaches the individual.

Further study indicated that these divergent approaches share much in the way of philosophy and results. Each accepts the premise that philanthropy should be supported as a matter of public policy, as well as the notion that funds which would otherwise be available to the government to be spent at its discretion would now be allocated according to private decisions. Each would also limit this individual control of government money, since donations must be made to certain institutions. Furthermore, some form of limitation could be placed on

the degree to which the government would participate for each individual. An interesting point is that the choice between a tax incentive program and a matching grant system would do nothing to solve the problem of how to properly treat ordinary income property. Under either method, for instance, the relevant amount could be either fair market value or cost.

The essential difference between the two methods is the incentive. When the government supports charitable giving by means of the tax system, the taxpayer has a personal incentive to give in the form of a reduction in what would otherwise be payable in taxes. A contributor thus has an actual decrease in the cost of government. There is no such effect, however, in the case of a matching grant system. The individual receives no personal economic benefit from acts of philanthropy. Personal wealth is reduced by the amount of the contribution. This raises the serious question of whether donations would be generated by this type of arrangement. If they would not, then the government would be incurring a cost without achieving its objective.

Responses to Question 1 of the initial questionnaire showed that the respondents overwhelmingly supported the tax system as an appropriate method to encourage philanthropy. The statement which appeared as Question 1 was: Tax incentives are an appropriate way to stimulate philanthropy. As Table 4.4 shows, there was almost unanimity of agreement. Significant differences occurred only in the degree of agreement. 92.6 percent of the artist group indicated that tax incentives were appropriate, with 55.6 percent expressing strong agreement.

Table 4.4. Responses Regarding the Appropriateness of Tax Incentives as Philanthropic Stimulants

Response	Artists Group	Art Museums	Government Archives	University Libraries
Strongly agree	55.6	96.2	50.0	76.5
Tend to agree	37.0	3.8	41.7	23.5
No opinion	3.7	0.0	0.0	0.0
Tend to disagree	0.0	0.0	8.3	0.0
Strongly disagree	3.7	0.0	0.0	0.0

Source: Survey of Artists, Art Museums, Government Archives, and University Libraries; responses to the statement, "Tax incentives are an appropriate way to stimulate philanthropy."

The art museum respondents all agreed that incentives were appropriate, with 96.2 percent of them supporting the strongly agree position. The responses of those individuals connected with government archives and those from the university libraries also indicated strong support for tax incentives. For the government archives classification, 91.7 percent felt that tax incentives were appropriate; 100 percent of university libraries group shared that opinion. Such evidence was not conclusive of the desirability of tax incentives, but rather was suggestive in its indication that affected parties were satisfied with the operation of the tax system as an incentive device. The strong trend made it obvious that, at least for the groups contacted, the tax system was not an inferior method of promoting charitable giving.

Even if the matching system were successful in encouraging donations, an effect which would be difficult (and probably impossible) to avoid would be that the adoption of such a system could cause the distribution of funds among charitable organizations to be restructured. Such a radical change in the form of government support would alter the strengths of donor decision factors so that it could not be assumed that the contributions to qualified institutions would continue in the same relative proportions. In the transition period, this shift would be a hardship on those institutions which found that their budgeted inflows had to be dramatically reduced. Over a longer period, the question would become one of which allocation was preferable.

The present distribution procedure method cannot be assumed to be optimal merely because it is the one currently being applied.

There was no one answer to this issue because, even if one knew precisely what changes would occur, the determination of the better results was a matter of judgment and not of fact. An investigation of Congressional materials showed that there was no apparent overt objective of Congress in regard to structuring the charitable contribution deduction in order to produce any particular pattern of distribution of benefits among philanthropic organizations. One hypothesis might be that Congress preferred to leave this decision to the judgment of society, although no Congressional statement has been made which would prove this conjecture.

Underlying the entire issue was the question of whether implementation and administration of a program of matching grants would be

feasible at a reasonable cost. Unlike the use of a provision within the tax system, which could be administered within an already existing system by utilizing the manpower of the Internal Revenue Service, the employment of a matching grant system would entail the added costs of a government division to manage the operation of the system. Such a government agency would be charged with such functions as the development of forms and regulations to administer the system, which would inevitably result in considerable paperwork in order to insure the integrity of the system.

Another administrative question which was raised was whether some of the advantages which had historically accrued to the use of the tax system would continue if the tax provisions were supplanted by a matching grant system. The deduction system, had, for example, proven to be effective in protecting the privacy of donors as a part of a general policy of not disclosing tax return information. It had also been free of government moral judgments other than as to the general classifications of institutions which qualified as the recipients of deductible charitable contributions. There was no obvious reason why such characteristics could not be preserved in a matching grant program, but whether they would—or even whether they should—was not so clear.

One other issue was also raised about the implementation of a matching system, although the character of the issue precluded a detailed discussion as a part of this thesis. Some scholars suggested that including religious institutions within such a system might cause

the program to be declared as unconstitutional. Those who are experts in constitutional law were not in agreement on this point, however. Some emphasized that the result was the same as under the current system, with the government in either case providing assistance through funds that are diverted and thus not available for other purposes. Others emphasized the process and concluded that the acceptability of indirect government support of religious organizations through tax expenditures was no assurance that government support through a direct subsidy in the form of a matching grant would find the same acceptability.

Finally, even if the alternatives were equally capable of satisfying Congressional intent and there were no inherent disadvantages in either system, an intangible factor which would favor the retention of the tax incentive approach was the feeling it might give to the tax-payer of having some direct control over how much money went to the government and how much to personal areas of interest. This might relieve the frustration of feeling like an insignificant part of a big bureaucratic society. Control over a small portion of total tax liability could alleviate some of the sting from the exaction process.

Summary

A federal tax incentive to encourage charitable contributions to qualified institutions, like any tax preference which relates to voluntary actions on the part of the taxpayer, permits the taxpayer to alter his tax liability and government revenues by choosing certain

courses of action. This means of encouraging desirable forms of behavior is found throughout the tax system and does not violate any standard of public policy.

The area of philanthropy is the recipient of government support as a matter of societal choice. The collective judgment of society seems to be that charitable institutions engage in meritorious activities which justify their public endorsement.

Within the field of philanthropy, works of art and the professional papers of politicians are valued for their cultural and historical contributions. Contemporary works of art are unique additions to the cultural heritage of society. Their withdrawal from public access, therefore, would represent a loss to the American people which could not be replaced. Government support may assist museums in performing their functions of collecting, preserving, and exhibiting items of cultural significance.

Likewise, political papers provide unique insight into the decision processes through which government officials influence the course of history. While such papers may be extremely bulky and thus costly to process and store, a survey of selected university foundations disclosed this to be a manageable problem which was more than outweighed by the value of such collections. The survey also showed that bias was not a serious issue.

One justification which has been offered for the federal government to participate in the support of philanthropic organizations is the comparison of cultural institutions in the United States with those

in Europe. The growth of American museums and libraries has in recent years been greater than it has for European institutions, a fact which many individuals attribute to the types of government support which are given in the United States.

Proponents of government support also regard the mutual promotion of philanthropy by both the public and private sectors as a process which is inherently beneficial. Such a procedure, it is maintained, permits each sector to make contributions to the welfare of society based upon its strengths. The problems of the community may be mitigated through whichever of several approaches might be most suitable to the situation.

There did not appear to be a clearly superior alternative to the federal tax system as a technique whereby the federal government might provide an incentive for private support of philanthropic institutions. Some tax scholars have proposed that the charitable deduction be supplanted with a matching grant program, but there did not seem to be any obvious advantage to such a change which could not be achieved within the income tax system.

CHAPTER 5

EFFECTS OF THE TAX REFORM ACT OF 1969 ON UNINTENDED TAXPAYER BENEFITS INVOLVING DONATIONS OF ORDINARY INCOME PROPERTY

If taxes are accepted as a proper method for the government to employ in stimulating charitable contributions, then an acceptable tax device must be used as the incentive for charitable giving. A tax provision should be chosen which can achieve as nearly as possible the objectives of Congress.

With charitable contributions of ordinary income property, as in the case of charitable donations in general, Congress has sought to meet two objectives. One goal was to provide an incentive which would inspire taxpayers to make donations to charitable organizations. The second objective was to frame the charitable contributions provisions so that taxpayers could not abuse them and receive unintended benefits.

Prior to the Tax Reform Act of 1969, the tax treatment accorded to ordinary income property was the same as the tax treatment which was generally given for other types of donations. An itemized deduction was permitted which was based upon the fair market value of the donated assets. Also the appreciation in value was not recognized as income. In attempting to better achieve its goals, however, Congress included in the 1969 Act a provision which limited the deduction for

ordinary income property donations to the basis of the property to the donating party.

The amendment of the tax treatment of charitable contributions of ordinary income property raised the issue of how well the new provision met the purposes of Congress. Chapter 5 focuses upon the aspect of potential misuse which may have been present. In particular, the characteristics of the law change have raised issues concerning equity, valuation, donor profiting, and taxpayer morale. The issue of the effectiveness of the charitable contribution deduction as an incentive will be the subject matter of Chapter 6.

Since it is not possible to present empirical evidence to substantiate all of the conclusions relating to taxpayer abuse, the issues in Chapter 5 are presented in a logical and analytical approach. The practical matter is that discussion of charitable deduction misuse is open to differing professional opinions.

The Issue of Equity

One of the primary reasons for the many tax reforms contained in the 1969 Act was equity. In stating the reasons for the bill, the Ways and Means Committee cited equity as an essential factor. "Tax reform is necessary both to be sure that those with substantially the same incomes are paying substantially the same tax and also to make sure that the graduated income tax structure is working fairly as between different income levels" (U.S. Congress, House, Committee on Ways

and Means 1969b, p. 10). The importance of working towards equity was mentioned frequently, and was emphasized by Senator Russell Long as follows:

Let me turn now and say a few words about the philosophy of the tax reform bill the committee has reported. This bill emphasizes equity. That is what the whole affair is about, and, although the committee has made many amendments to the House bill, in this respect there is little difference between the committee's bill and the bill passed by the House. Actually . . . both bills have a common goal—a fairer and more efficient tax system (West 1969, p. 2492).

Equity, then, was a factor which pervaded the provisions of the 1969

Tax Reform Act. Both Congress and numerous committee witnesses addressed the question of the equitability of the charitable deduction when the 1969 Act was under consideration. There are a number of different facets of the equity issue which were discussed.

Vertical Equity

One point of criticism which Congress raised was that the charitable contribution deduction was more available to persons with high incomes than to persons with low incomes. Congressman John W. Byrnes of Wisconsin, for example, expressed concern regarding the problem of vertical equity. He noted that the principle that those persons who are relatively better off should be shouldering a relatively larger share of the tax burden was being violated:

Thus, some people, because of their wealth, are able to enjoy the luxury of deciding for themselves that they want to put their money into areas wherein they can control what services are going to be conducted; whereas, the great masss of the American people in the middle and lowerincomes can't enjoy that luxury (U.S. Congress, House, Ways and Means 1969a, p. 1571).

This situation resulted from the fact that the deduction was permitted for only those individuals who itemized deductions. Proportionately more high income taxpayers itemized their deductions and thus received a tax savings from donations. Furthermore, the value of a deduction varied according to the marginal tax bracket of the individual so that even among itemizers it benefited the high bracket taxpayer more. A one dollar donation would be worth fifty cents to a fifty percent taxpayer, but only half that amount to a twenty-five percent taxpayer.

Some tax scholars, such as Paul R. McDaniel, believed that the tax deduction for charitable giving should properly be viewed as a form of federal matching program. When an individual makes a contribution, the contribution is made on behalf of both the individual and the government. Thus, a taxpayer in the 35 percent bracket who gives \$100 would be giving \$65 personally and \$35 on behalf of the U.S.

Treasury. In making the personal choice of giving, the taxpayer also denotes the amount and the recipient of the government's share. Such an analogy is interesting since it shows the tax system to be a variable matching system, with the larger matches accruing to donations by the more well-to-do.

There was a lack of unanimity, however, as to whether the deduction for charitable contributions did violate the principle of equity. Since the funds are earmarked for a special philanthropic activity, some scholars would say that it would be necessary to consider the tax result in conjunction with the expenditure result. The real issue could be resolved only by comparing the taxpayers who gave

up the money with those who received the benefit from it. If the movement were from a composite of taxpayers with higher incomes to a group of taxpayers with smaller average incomes, then there would be a progressive redistribution of resources.

Such an argument is valid in discussions of some points, but in this case, would be more an evasion of the issue unless it were presented properly. If the government has made a determination that it will forego a given amount of revenue (or will make a given amount of expenditure) in support of some objective, the problem has been reduced to one of how the cost will be appropriated. The fact that an alternative produces a net shifting which is in the desirable direction is not enough to justify the selection of that course of action. The method must produce results which are superior to those available under other alternatives. Comparisons of the movement of assets between groups should be discussed as an item of distribution rather than equity in order to emphasize this distinction.

The potential violation of the principle of vertical inequity was removed, insofar as donations of ordinary income property were involved, by the Tax Reform Act of 1969. The 1969 Act, in removing any meaningful amount of deduction for contributions of such property, also eliminated any significant degree of vertical inequity. While there was still a violation of vertical equity in principle since there was still an itemized deduction, in practice the amounts were not substantial.

Equity between Cash Donations and Property Donations

An equity violation which was cited by both Houses of Congress was the fact that gifts of property were treated preferentially under pre-1970 laws. The Committee on Finance, in referring to this issue, stated:

The combined effect, in the case of charitable gifts of appreciated property, of allowing a charitable contributions deduction for the fair market value (including the appreciation) and at the same time not taxing the appreciation, is to produce tax benefits significantly greater than those available with respect to cash contributions (U.S. Congress, Senate, Committee on Finance 1969b, p. 80).

The Committee on Ways and Means made a similar comment (U.S. Congress, House, Committee on Ways and Means 1969a, p. 53).

The preferential treatment resulted since the cash that was contributed was usually made up of after-tax dollars. That is, the source of the funds contributed was presumably from earnings which were subject to taxation as income. In the case of property, on the other hand, the appreciation of the property was not included in income because it was held that there had been no taxable event to cause such income to be recognized. Herman L. Trautman, Professor of Law at Vanderbilt University, stated the case as follows:

A taxpayer who contributes property which has appreciated in value to charity generally is allowed a charitable contribution deduction for the fair market value at the time of contributing and because a gift has traditionally not been regarded as a realization of income, the appreciation in value has not been included in the gross income of the donor. The combined effect of not taxing the appreciation in value and at the same time allowing a charitable contribution deduction for the fair market value of the property produces a tax

benefit which is greater than that in case of the contributions of cash gifts (U.S. Congress, Senate, Committee on Finance 1969a, p. 2246).

As Professor Trautman's testimony indicated, the distinction between cash and property derived from the nontaxability of any appreciation in value of the property while at the same time granting a deduction for the full fair market value.

Mr. Boris Bittker also supported the position that equity dictated that a treatment similar to that of a cash donor be accorded to a donor of assets. He noted that the cash donor "must rely upon contributions out of current earnings to discharge his moral obligation" (Tax Institute of America 1972, p. 166). The deduction simply removed the tax on current income from the part which was removed from the personal benefit of the donor.

Senator Albert Gore of Tennessee noted that the tax benefits which were available for property contributions were generally more available to the wealthy.

Under present rules a taxpayer who gives appreciated property to charity receives a double tax benefit. He gets a charitable deduction for the full fair market value of the property and he excludes the appreciation from income. On the other hand, the person who must make his charitable contributions out of his wage income recieves only a single tax benefit. He is entitled to a deduction for his gift, but he includes in income the funds out of which the gift was made.

Almost by definition, the privileged status accorded gifts of appreciated property favors the wealthy and discriminates against other taxpayers. From the standpoint of tax justice, there is no basis for the present treatment of charitable gifts of appreciated property (U.S. Congress, Senate, Committee on Finance 1969a, p. 334).

The Tax Reform Act of 1969 by no longer allowing the portion of the value of ordinary income property which is unrealized appreciation to be deducted, removed the benefit distinction between cash and ordinary income property donations. The appreciation would not, under current law, recieve a double benefit. It would still not be taxed as income, but it would not be the source of a deduction either. This treatment produces results which are similar to those connected with cash donations.

An example will serve to illustrate the preceding conclusion. Assume that Taxpayer A and Taxpayer B are each in the forty percent marginal tax bracket and that each itemizes personal deductions. Now assume that Taxpayer A, a wage earner, makes a \$100 cash donation to an art museum. As a consequence, the taxes of Taxpayer A are reduced by $$40 ($100 \times 40\%)$. The net cost of the donation is therefore \$60 (\$100 - \$40) to Taxpayer A.

Assume Taxpayer B is an artist who has decided to contribute an original work of art to a museum. Assuming a cost to Taxpayer B of zero and a \$100 fair market value, Taxpayer B is making a contribution which is comparable to the cash donation of Taxpayer A. Unlike the tax treatment which is received by Taxpayer A, no deduction is allowed to Taxpayer B for the charitable contribution. Taxpayer B, however, has an advantage in that the appreciation in value is not recognized as income. Taxpayer B therefore does not pay a tax of \$40 (\$100 x 40%). The cost in terms of the cash foregone by disposing of the property through a donation would be \$60 (\$100 fair market value less the \$40

tax avoided), which is the same as the cost of the cash donation to Taxpayer A.

To summarize the similarity between the two sets of events, both Taxpayer A and Taxpayer B have, through an investment of their time and effort, created \$100 of economic income. For Taxpayer A, the income is in the form of cash and is recognized as income for tax purposes. Since the cash is donated to a qualified charitable institution, the income is offset by a deduction. This places Taxpayer A in the same position as if the income had not been earned. For Taxpayer B, the income is in the form of appreciated property, but is not recognized as income for tax purposes. However, there is also no deduction when the property is donated to a qualified charitable institution. This treats Taxpayer B as if there were no income, so that Taxpayer B is in the same position as Taxpayer A. Thus, cash donations and owner-created property donations receive equitable tax treatments.

Equity between Service Donations and Property Donations

Some tax scholars also maintained that under the charitable provisions prior to 1969, the tax treatment of contributed property was favored over donated services. The tax law did not allow a deduction if time or services were donated to a charity, except for any actual cost incurred. An accountant could not, for example, donate professional services to a tax-exempt organization and then take a charitable deduction for the value of those services. The deduction would be limited to any out-of-pocket costs that had been incurred.

If what an artist gives when donating a work is primarily time and talents, then it would appear inequitable that the artist should be granted tax favoritism because artistic services lead to a more tangible product than do those of the accountant. Congress made reference to the fact that tangible personal property is often the product of the efforts of the contributor in the following remarks:

Works of art, such as paintings are one of the types of items which frequently are given to charities, and in which there often is a substantial amount of appreciation. The large amount of appreciation in many cases arises from the fact that the work of art is a product of the donor's own efforts (as are collections of papers in many cases) (U.S. Congress, House, Committee on Ways and Means 1969b, p. 55).

The person who gave time or services to a charitable institution was in the same tax position as the person who donated cash. An individual who donated services did not record the value as a deductible gift to charity, but neither was there any imputed income based upon the value of those services. The taxpayer was thus in the same position as if there were income and an offseting deduction. The donor of appreciated property, however, received a benefit which would offset other income which had been received.

Mr. Murray S. Weber illustrated the inequity during testimony before the Senate Finance Committee.

The House also proposed to limit gifts of appreciated ordinary income assets. This proposal will eliminate a serious inequity in our tax laws which favors a small class of taxpayers. An artist who contributed one of his paintings to charity in effect is contributing the value of his services and is entitled to a deduction for the value thereof. Thus, if the artist paints ten paintings a year, each of which he sells for \$5,000, he would earn \$50,000 on which

he would be taxable. However, if he contributed two of these paintings to a qualified charity his earnings will be only \$40,000 and he will be taxable on only \$30,000 after allowance of a \$10,000 charitable contribution deduction. Such an opportunity is not available to the masses and little can be said in support of this type of deduction (U.S. Congress, Senate, Committee on Finance 1969a, pp. 1362-1363).

The disparity in treatment which existed between gifts of ordinary income property and gifts of services was corrected by the Tax Reform Act of 1969. The 1969 Act provided for no deduction for any appreciation in the value of ordinary income property, so that only any out-of-pocket costs could be deducted. This amendment changed the tax treatment for donations of ordinary income property so that it would be the same as the treatment for donations of services.

The Issue of Valuation

An issue which was prevalent with respect to tangible personal property was the problem of appraisal. The Ways and Means Committee cited valuation as a factor of importance in its deliberations. "Works of art are very difficult to value and it appears likely that in some cases they may have been overvalued for purposes of determining the charitable contribution deduction" (U.S. Congress, House, Committee on Ways and Means 1969a, p. 55). This statement suggested that Congress was partially motivated in its actions by a concern about the potential abuse that existed when the amount of the deduction was established subjectively.

The substance of the problem and the related concern was indicated in the following exchange between Congressman Barber Conable of New York and Mr. David S. Jacobson, representing the Association of Independent California Colleges.

Mr. Conable. I have had the impression that sometimes things which universities want to get which are of no great intrinsic value are contributed at fairly high figures for the sole purpose of getting the deduction for the donor—such things as public papers, the public papers, let's say, of a Congressman.

Mr. Jacobson. I know that there have been such instances of this in works of art, papers, that sort of thing (U.S. Congress, House, Committee on Ways and Means 1969a, pp. 1479-80).

The potentially dangerous characteristic was that there might be no objective data to be drawn upon in establishing fair market value. There would be no "willing buyer" with a vested interest in preventing the setting of an artificially high value. It was to the benefit of the charitable institution to remain uncommitted and to allow the donor to take a deduction for whatever amount that party might wish. Proving a fair market value for an item for which there was no established market was a task which was best left to the donor and the Internal Revenue Service. Involvement by the charity in the appraisal process might have had the unfortunate effect of alienating the organization from a valued contributor.

Mr. Perry T. Rathbone, as President of the Association of Art Museum Directors, argued before the Finance Committee that valuation problems had become antiquated. He cited the Advisory Panel on the Evaluation of Works of Art as being a force which had aided in "identifying and controlling the minority of abuses that have given the donation of works of art an occasional bad press..." (U.S. Congress,

Senate, Committee on Finance 1969a, p. 2144). He continued by praising the results which this panel had helped to achieve.

Indeed it should be noted that all of the abuses cited in support of the present discriminatory tax measures occurred before the operation of the panel. The IRS has informed us that the abuses have decreased notably in the last 2 years and, further, the opinions and findings of the panel have yet to be questioned by the complainant taxpayer (U.S. Congress, Senate, Committee on Finance 1969a, p. 2144).

Under-Secretary of the Treasury Charles E. Walker also felt that having experts meet to advise the Commissioner on art values was a significant step in handling the problems involved in such valuations. He explained the procedure which existed in regard to valuing such assets.

The values are determined in the first place by the taxpayer in taking his deduction. He has to take a position as to the value . . .

The Internal Revenue Service has a group of valuation engineers. . . . They will render an opinion. If they are in disagreement with the taxpayer's valuation, then the matter is passed upon in the District Director's office after a conference or in the Appelate Division. If the parties aren't able to agree, it is litigated before the Tax Court or the Federal District Court or the Court of Claims (U.S. Congress, Senate, Committee on Finance 1969a, pp. 5653-54).

Mr. Rathbone also questioned whether the values of such items as painting and antiques were difficult to verify. "Works of art are just as susceptible to valuation, by those who have spent a professional lifetime in their study, as are stocks" (U.S. Congress, Senate, Committee on Finance 1969a, p. 2144). This point had been raised earlier in written testimony sent to the Committee.

It is patently unfair to discriminate against a taxpayer with an asset "difficult to value" and in favor of a taxpayer with an intangible asset which is presumed to be more susceptible of valuation particularly since stock in a private corporation is oftentimes more difficult to value than a work of art.

Moreover the Internal Revenue Service has attempted to resolve the valuation problem by creating an art advisory panel of experts and it has promulgated guidelines with respect to the valuation of art objects. The stated reason for penalizing taxpayers who make gifts of appreciated tangible personal property is therefore not overly persuasive (U.S. Congress, Senate, Committee on Finance 1969a, p. 1362).

This statement was not made in reference to ordinary income property donations, but rather was made by an individual who favored the restrictions placed on deductions for ordinary income property donations for other reasons. It was nevertheless an appropriate statement of the argument that valuation was not a problem.

The comments just cited indicated that the problem of valuation may have been taken care of already, or at least may have become an issue of lesser importance than had been suggested by critics. The Senate Finance Committee, in commenting on the problem of valuing works of art, summed up its attitude in the following statement:

The committee considers it appropriate to treat gifts of tangible personal property (such as paintings, art objects, and books not produced by the donor) to public charities and schools similarly to gifts of intangible personal property and real property. Moreover, the committee believes that the serious problems of valuation of gifts of tangible personal property would still remain even if the appreciation were to be taken into account for tax purposes, and that a more desirable method of controlling overvaluations is for the Internal Revenue Service to strengthen its audit procedures for reviewing the value claimed on such gifts. Special consideration is warranted even in the case of smaller contributions than those which presently are closely reviewed by the Commissioner's advisory panel on valuation of art objects (U.S. Congress, Senate, Committee on Finance 1969a, p. 82).

The issue of valuation, as indicated by this quotation, was not limited to ordinary income property. There also existed an appraisal problem with respect to other tangible personal property. The Finance Committee, however, did not regard valuation as a difficulty which justified the limitation of the amount of the deduction to the adjusted basis. As a result, Congress continued to use fair market value in measuring the amount of deduction permitted when tangible personal property was donated to a charitable institution. This would seem to indicate that Congress did not consider valuation problems to be a compelling reason for removing the fair market value deduction for charitable contributions of ordinary income property.

The Issue of Donor Profit

A matter which the record showed to have been of great concern to government officials as they considered tax reform in this area was the thought that taxpayers were profiting in the name of philanthropy. The Treasury Department, for example, emphasized this problem in its initial proposal.

When property, the gain on which would be taxed at ordinary income rather than capital gain rates, is donated to a charity a severe distortion of tax liability may result. This is because under present law the ordinary income earned with respect to the property is not taxed if the individual can realize more after-tax income by donating ordinary income or short-term capital gain property (which is taxed at ordinary income rates) to charity than would be the case if the property had been sold for a profit.

For example, a married taxpayer filing a joint return with \$95,000 of income, after allowing for deductions and personal exemptions, is in the 50 percent marginal tax bracket and would have an after-tax net income of \$52,820.

If this individual sells an asset worth \$15,000 which would produce \$12,000 of income taxable at ordinary income rates, his taxable income would be increased to \$107,000 and, after payment of his tax, he would be left with \$60,480 of after-tax income. On the other hand, by donating the asset to charity he pays no tax on the \$12,000 income thereby reducing his taxable income to \$80,000. After payment of Federal income tax he would be left with \$61,660. Thus, by donating the asset to charity rather than selling the asset the tax-payer made \$1,180, the amount by which he improved his after-tax position. In effect the gift cost the taxpayer nothing and the Government paid him \$1,180 for making the gift (U.S. Congress, House, Committee on Ways and Means 1969a, pp. 179-80).

This example could easily have been made more extreme by either increasing the marginal tax rate of the taxpayer or decreasing the cost basis of the property.

The question was one of equity. It involved neither the frequency of occurrence nor the total revenue loss, but rather the degree of distortion which was present. The following exchange between Congressman Byrnes of the Ways and Means Committee and Mr. Cohen of the Department of the Treasury exemplifies this fact.

Mr. Byrnes. But that is a pretty limited area, isn't it? Property that has appreciated and would produce ordinary income rather than capital gains is a small area?

Mr. Cohen. I would think . . . that, in this total of \$55 million of nontaxed contributions, it is likely to be relatively small, but it is particularly grievous when it occurs. There are instances of an artist painting a painting himself which, if he sold it, would be ordinary income, but by contributing it to charity he saves a very large amount of his income tax without having to take into income the value of the painting (U.S. Congress, House, Committee on Ways and Means 1969a, p. 5530).

In summing up the arguments which favored a restriction of the deductibility of charitable gifts, the Ways and Means Committee made

first mention of this issue, pointing out that the incidence of support had shifted from the donor.

The charitable contributions deduction was not intended to provide greater—or even nearly as great—tax benefits in the case of gifts of property than would be realized if the property were sold. In gifts of appreciated property where the tax savings is so large, little, if any, charitable motivation may remain. In such cases, the Federal Government is almost the sole contributor to the charity (U.S. Congress, Senate, Committee on Finance 1969a, p. 46).

Finally, the Ways and Means Committee characterized the problem as follows in making its recommendations for amendment.

Thus, in some cases it actually is possible for a taxpayer to realize a greater after-tax profit by making a gift of appreciated property than by selling the property, paying the tax on the gain, and keeping the proceeds. This is true in the case of gifts of appreciated property, which would result in ordinary income if sold, when the taxpayer is at the high marginal tax brackets and the cost basis of the ordinary income asset is not a substantial percentage of the fair market value (U.S. Congress, House, Committee on Ways and Means 1969a, p. 53).

The Tax Reform Act of 1969, by removing the savings from a tax deduction at the top marginal rate of the taxpayer, eliminated the opportunity to profit through charitable giving. The taxpayer could no longer combine the savings of untaxed appreciation in value with the savings of a charitable deduction, but was limited to the benefit of not having the appreciation recognized as income at the time that the property was donated. Given the current maximum tax rate on earned income of fifty percent, one dollar donation could produce tax benefits of no more than fifty cents. Since a taxpayer in the fifty percent bracket would under such circumstances keep fifty cents after paying

taxes on a one-dollar sale, such a taxpayer would, even in this extreme situation, not be better off by donating than by selling.

The Issue of Taxpayer Morale

The final major issue relating to the Congressional objective of preventing unintended taxpayer benefits, a matter which evolved from a consideration of all of the others, was the opinion of the public as to the operation of the provisions which governed deductions for charitable contributions. Because of the nature of the federal income tax system, it was vital that any provision which influenced public morale be given long and careful consideration. Confidence in the system is a necessary underpinning when so much reliance is placed upon self-assessment. Congress was well aware of this in 1969, as evidenced by the House Report.

The fact that present law permits a small minority of high-income individuals to escape tax on a large proportion of their income has seriously undermined the feeling of tax-payers that others are paying their fair share of the tax burden. It is essential that tax reform be obtained not only as a matter of justice but also as a matter of taxpayer morale. Our individual and corporate income taxes, which are the mainstays of our tax system, depend upon self-assessment and the cooperation of taxpayers. The loss of confidence on their part in the fairness of the tax system could result in a breakdown of taxpayer morale and make it far more difficult to collect the necessary revenues. For this reason alone, the tax system should be improved (U.S. Congress, House, Committee on Ways and Means 1969b, p. 9).

As this quotation states, the cost of administering the tax laws is tied very tightly to the cooperative spirit of the American public. It would be sadly ironic if a tax provision which was intended to encourage voluntary contributions to worthy causes were to at the

same time reduce taxpayer willingness to voluntarily comply in meeting their tax obligations. "We would not want to encourage philanthropic giving at the expense of the basic integrity of the tax system and at an excessive cost to federal revenue" (U.S. Congress, Senate, Committee on Finance 1969a, p. 6140).

To a large degree, it was not even a matter of what was true. Like auditor independence, it was not only a matter of fact but also a matter of appearance to the public. An auditor would be independent when in a state of mind which allowed professional judgments to be drawn in a spirit of detachment. The auditor would be independent in fact. Nonetheless, an auditor would not be permitted to indicate to the public a state of independence when the auditor was not independent in appearance due to some relationship which existed.

In the same manner, a given tax provision might provide a legitimate and justifiable preference which would lead toward very desirable goals. It would nevertheless be a loophole if public opinion deemed it to be such. The following statement by Professor Lawrence M. Stone of the School of Law of the University of California at Berkeley emphasized this point.

The Federal Government also has the responsibility for maintaining public confidence in the federal tax system. If the public believes (emphasis added) that the tax benefits to charity are "abuses" or "loopholes," continuation of these benefits could cause a breakdown in our self-assessment system (U.S. Congress, House, Committee on Ways and Means 1969a, p. 191).

The effect of taxpayer morale, then represented an important area. Relying as it does upon voluntary compliance and self-assessment,

the income tax could exist only so long as the tax system was accepted as fair and equitable by the American public. Otherwise, tax evasion could become acceptable as the taxpayer's response to an unjust law. Such a development could cause a revenue loss which was far in excess of the direct loss caused by the deduction itself. Measurement of taxpayer morale changes and identification of the causes of such changes would be extremely difficult. It would seem probable that the Tax Reform Act of 1969 was a boost to taxpayer confidence, at least with respect to charitable contributions of ordinary income property. Such a conclusion seems justified since the amended charitable deduction provision which related to such property did not allow the situations to occur which had been so prominently discussed by the news media prior to the 1969 Act.

Summary

Prior to the enactment of the Tax Reform Act of 1969, the rule with regard to charitable contributions of ordinary income property was that they could be deducted from adjusted gross income as itemized deductions for the fair market value of the donation. The effects of this rule were in some ways not consistent with the objectives of Congress and, as a consequence, the law was amended in an attempt to formulate the law to be more consistent with Congressional intent. The new provision restricted the deductibility of donations of ordinary income property to the adjusted basis of the contributing taxpayer.

Equity, which was a problem of concern in general as well as in the specific area of gifts of ordinary income property, drew much attention. The use of an itemized deduction was subject to criticism from the point of view of creating effects which were contrary to the Congressional objective of vertical equity. A deduction in any form would violate the concept of vertical equity since taxpayers who have the largest incomes (and thus are in the highest tax brackets) would receive the greatest tax relief for any given amount of contributions. The use of an itemized deduction compounded the problem because the percentage of individuals who used the standard deduction decreased as the income level increased. The problem was removed by the 1969 Tax Reform Act. The limiting of the deduction of ordinary income property donations to adjusted basis eliminated vertical inequity as a problem of consequence.

The use of fair market value as the measuring device for calculating the deduction for charitable gifts created additional problems when appreciated property was donated. The difference between Congressional intent and actual effects was particularly evident when the contribution took the form of ordinary income property. One inequity was that donations of cash did not receive the same package of benefits as donations of property. Another discrepancy between forms of contributions to charity was that those in the form of property were treated preferentially to those in the form of services. As a result of the 1969 Act, ordinary income property donations received tax benefits which were consistent with those available for contributions of cash

or services. This effect was achieved by not allowing a deduction for untaxed appreciation, which removed the double benefit previously available for contributions of ordinary income property.

Valuation was an issue about which there was no consensus. The valuing of donated property had been an area of abuse on some occasions in the past and to some scholars this was cause for removal of the use of fair market value in determining the donation. Others indicated that the advisory board within the Treasury Department had been successful in preventing improper appraisals from inflating tax bene-The assertion had also been made that the various forms of ordinary income property were not inherently more difficult to value than were many other types of property. The possible lack of importance of the problem of appraisal was further emphasized by the fact that fair market value was still used in computing the deduction for tangible personal property which was not ordinary income property. 1969 Tax Reform Act circumvented this issue by eliminating value as a factor in determining the amount of the deduction for appreciated ordinary income property. As indicated, however, there may well have been no material problem concerning valuation which would require such action.

One of the most serious accusations regarding ordinary income property was that a donation of such property could result in a better cash position after taxes than would a sale. Such a situation was assailed by many witnesses to Congress in 1969, including a number of philanthropic institutions who regarded this potentiality as inequitable

and as a source of bad publicity to the entire nonprofit sector. This problem was corrected since the new law did not allow these circumstances to occur.

A final concern which emanated from the others was the potential risk which some experts perceived that the mechanics of operation of the charitable contribution deduction would have a detrimental effect upon taxpayer morale. Such a consequence would create an indirect cost to the federal government either through revenues lost or increased administrative expenses. There did not seem to be an acceptable means of measuring the effect of the ordinary income property donation rules on taxpayer morale. Due to the effects which have been discussed in this chapter, however, it seemed probable that any effect of this provision would be positive.

CHAPTER 6

EFFECTS OF THE TAX REFORM ACT OF 1969 ON DONATIONS OF ORDINARY INCOME PROPERTY

Earlier chapters discussed the provisions of the federal income tax law on the charitable contribution deduction and indicated that such provisions were intended by Congress to balance two frequently inconsistent goals. The pertinent provisions of the Tax Reform Act of 1969, such as the restricted deductibility of ordinary income property donations, were intended to restructure the tax laws to meet better these Congressional purposes.

The historical purpose for the deduction for charitable contributions was to provide a government incentive for individuals to make financial donations to philanthropic institutions. Nowhere in the 1969 committee hearings and committee reports was there any statement which indicated that Congress thought donations of ordinary income property, or of any other type of property, were no longer desirable. The limitations on the deduction for ordinary income property contributions (as well as the many other restrictions on charitable contributions deductions) were the consequence of what Congress regarded as unjustified opportunities for misuse of the charitable deduction provision.

Congressional comments appeared to be unanimous in their indication that the objective was to eliminate the abuse and not to eliminate the incentive. The continued objective of providing an incentive was shown by the raising of the deduction ceiling from thirty percent to fifty percent of adjusted gross income. Both the Committee on Ways and Means and the Committee on Finance stated that the reason for this change was "to strengthen the incentive effect of the charitable contributions deduction for taxpayers . . ." (U.S. Congress, House, Committee on Ways and Means 1969a, p.51; U.S. Congress, Senate, Committee on Finance 1969a, p. 77). Statements by individual members of Congress were also consistent with the continued support of philanthropy. Representative James A. Burke of Massachusetts summed up the general attitude of Congress with the assertion, "I have no quarrel with charity work, but there are many sins committed under the name of charity" (U.S. Congress, House, Committee on Ways and Means 1969a, p. 1585).

The difficulty which Congress faced was that of properly balancing two diverse goals. This problem was referred to by Mr. John D. Rockefeller, 3rd as follows:

We are faced with a classic problem: How do we prevent misconduct within a great and needed institution without over-reacting to the point where the institution itself is severely crippled? Misconduct must be stopped, but we must not, as the saying goes, throw out the baby with the bath (U.S. Congress, House, Committee on Ways and Means 1969a, p. 1566).

Chapter 5 analyzed the 1969 Tax Reform Act in terms of eliminating opportunities for taxpayers to receive undue benefits from making donations of ordinary income property.

Chapter 6 reports survey data on whether the effects of the ordinary income property provision were consistent with the

Congressional objective of providing an incentive for individuals to make gifts to philanthropic institutions. The evidence reveals the extent to which survey respondents discerned an effect on donations of ordinary income property due to the changes contained in the Tax Reform Act of 1969. Their opinions were gathered for works of art, personal papers and memoranda, and the professional materials of political figures. The analysis also included responses pertaining to the major factors which might affect donation decisions. An awareness of these factors provided a basis from which inferences could be drawn to explain the degree of change (if any) which was observed in donations of various forms of ordinary income property.

A significant number of questionnaire responses contained comments concerning the professional materials of writers. In recognition of the indicated importance of these materials to the institutions of interest in this study, a limited discussion is included in this chapter which relates to the manuscripts and similar property of literary figures.

Effects on Donations of Owner-Created Works of Art

To determine whether the Congressional intent of encouraging charitable contributions of works of art was being accomplished, art museum directors were asked about the effect of the Tax Reform Act of 1969 on contributions of ordinary income property. The art museums which responded to the questionnaire gave substantial support to the statement that ordinary income property donations decreased as a

result of the 1969 Tax Reform Act. A total of 61.5 percent of the museums strongly agreed that the Tax Reform Act of 1969 had caused a general decline in ordinary income property contributions. An additional 26.9 percent tended to agree with that assessment. Only 3.8 percent of the responding art museums marked no opinion as their answer, while 7.7 percent tended to disagree and none disagreed strongly with the statement. The results are shown in Table 6.1.

Table 6.1 Responses of Art Museums on Whether the Tax Reform Act of 1969 Caused a Decline in Donations of Ordinary Income Property

Response	Percentage		
Strongly agree	61.5		
Tend to agree	26.9		
No opinion	3.8		
Tend to disagree	7.7		
Strongly disagree	0.0		

Source: Survey of Art Museums; responses to the statement, "The Tax Reform Act of 1969 has caused a general decline in donations of ordinary income property.

Art museums were also asked about the effect on their particular institution as a result of the ordinary income property deduction limitation which was included in the Tax Reform Act of 1969. Table 6.2 summarizes the replies.

Table 6.2. Responses of Art Museums on Whether Giving by Their Donors Changed as a Result of the Limited Deductibility of Ordinary Income Property Donations

Response	Percentage	
Strong agree	28.0	
Tend to agree	.28.0	
No opinion	28.0	
Tend to disagree	16.0	
Strongly disagree	0.0	

Source: Survey of Art Museums; responses to the statement, "Donors to my institution have changed their giving patterns due to the influence of the limited deductibility of ordinary income property donations."

The responding art museums indicated that the Tax Reform Act of 1969 caused a change in their receipt of gifts of ordinary income property. Only 16.0 percent of the art museums disagreed with the statement that there had been a change in their receipts of such property. On the other hand, 56.0 percent of respondents did perceive that there had been a change; 28.0 percent expressed strong agreement with the statement to that effect. Thus, almost eight out of ten responding museums which could give an opinion were able to note an effect due to the 1969 Tax Reform Act. A rather large portion of the respondents (28.0 percent) marked that they had no opinion as to what the effect had been to them. This level of no opinion responses might have been caused by the inadequacy of the records of some art museums in providing accessible information about such donations. This was

suggested by the fact that many art museums (as well as other institutions) were not able to provide specific dollar information about receipts of contributions. This point is more fully developed later in this chapter.

The responses of the artists as to whether their giving had changed as a result of the restriction on the amount of ordinary income property donation deductions were quite similar to the replies of art museums regarding receipts. The results are summarized in Table 6.3.

Table 6.3. Responses of Artists on Whether Their Giving Changed as a Result of the Limited Deductibility of Ordinary Income Property Donations

Response	Percentage	
Strongly agree	42.9	
Tend to agree	25.0	
No opinion	25.0	
Tend to disagree	3.6	
Strong disagree	3.6	

Source: Survey of Artists; responses to the statement, "I have changed my giving pattern due to the influence of the limited deductibility of ordinary income property donations."

Over two-thirds of the responding artists (67.9 percent) had changed their giving patterns due to the influence of the limited deductibility of ordinary income property donations. Only 7.2 percent of responding artists disagreed that their giving had been altered due to the 1969 deduction rules for donations of ordinary income property.

The replies of artists also tended to support those of art museums about the general change in contributions of ordinary income property. As shown by Table 6.4, the greater part of the responding artists felt that gifts of ordinary income property had declined.

Table 6.4. Responses of Artists on Whether the Tax Reform Act of 1969 Caused a Decline in Donations of Ordinary Income Property

Response	Percentage	
Strongly agree	39.3	
Tend to agree	32.1	
No opinion	28.6	
Tend to disagree	0.0	
Strongly disagree	0.0	

Source: Survey of Artists; responses to the statement, "The Tax Reform Act of 1969 has caused a general decline in donations of ordinary income property.

It is particularly noteworthy that none of the artists disagreed with the assertion that the 1969 Tax Reform Act had caused a general decline in donations of ordinary income property. To examine the relationship between contribution decisions and the income tax laws from another direction and also to relate it more specifically to the responding parties, question nine consisted of the following statement: The tax benefits of a donation are seldom mentioned when we discuss a tentative donation with a charitable donor. (The statement to which the artists responded was worded differently, reading as follows: The tax benefits of a donation are seldom mentioned when I discuss a tentative donation with a charitable institution.) The results of this question are summarized in Table 6.5.

Table 6.5. Responses on Whether Tax Matters Are Mentioned During Discussions of Donations

Response	Artists	Art Museums
Strongly agree	7.4	3.8
Tend to agree	33.3	0.0
No opinion	14.8	0.0
Tend to disagree	29.6	38.5
Strongly disagree	14.8	57.7

Source: Survey of Art Museums and Artists; responses of art museums to the statement, "The tax benefits of a donations are seldom mentioned when we discuss a tentative donation with a charitable donor"; responses of artists to the statement, "The tax benefits of a donation are seldom mentioned when I discuss tentative donation with a charitable institution."

These results were interesting in several ways. Although there did appear to be some discussion between the contributor and the recipient which related to the tax implications of the transaction, artists and art museums were extremely divergent on this question. Using a chi square test, the difference in the responses was significant at the 0.0005 level. (That is, there was a 0.05 percent probability that the differences were due to chance.) Of the responding museums, 96.2 percent either strongly disagreed or tended to disagree with the statement that the tax consequences were seldom mentioned. Unlike the museums, the artists were evenly divided in their answers. For the artists, 40.7 percent agreed that tax benefits were seldom mentioned, while 44.4 percent disagree. The divergence in response between individuals and institutions might be expected if the discussion of tax implications was generally initiated by the donating party.

The questionnaire attempted to provide information which would aid in explaining the relationship between the Tax Reform Act of 1969 and donations of ordinary income property. It did so by posing this question: According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions? The factors listed were: income tax factors; estate planning; prestige or recognition; habit or continuation of lifelong pattern; moral commitment; and previous association with organization. Each factor could be marked as very important, important, modestly important, and unimportant. The responses of artists and art museums are presented in Tables 6.6 and 6.7.

Table 6.6 Responses of Art Museums and Artists on the Importance of Various Factors in Influencing Contribution
Decisions

	Very Important	Important	Modestly Important	Un- important
Artists				
Income tax factors	37.0	40.7	11.1	11.1
Estate planning	38.5	30.8	15.4	15.4
Prestige; recognitio	n 19.2	10.2	38.5	23.1
Habit; continuation of lifelong patter	n 0.0	38.5	26.9	34.6
Moral commitment	18.5	40.7	22.2	18.5
Prior association with organization	12.0	48.0	32.0	8.0
Art museums				
Income tax factors	80.8	19.2	0.0	0.0
Estate planning	42.3	34.6	19.2	3.8
Prestige; recognition	n 26.9	50.0	19.2	3.8
Habit; continuation of lifelong patter	n 11.5	53.8	34.6	0.0
Moral commitment	3.8	46.2	42.3	7.7
Prior association with organization	11.5	57.7	23.1	7.7

Source: Survey of Art Museums and Artists; responses to the question, "According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions?"

Table 6.7. Average Responses of Art Museums and Artists on the Importance of Various Factors on Donation Decisions

Response	Artists	Art Museums
Income tax factors	1.963	1.192
Estate planning	2.077	1.846
Prestige; recognition	2.654	2.000
Habit; continuation of		
lifelong pattern	2.962	2.231
Moral commitment	2.407	2.538
Prior association		
with organization	2.360	2.269

Averages were determined by counting "very important" as 1, "important" as 2, "modestly important" as 3, and "unimportant" as 4.

Source: Survey of Art Museums and Artists; responses to the question, "According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions?"

The summary of responses indicates that in the field of art income taxes were perceived as being extremely important as a factor influencing decisions about charitable contributions. Art museums in particular stressed the significance of the income tax; 80.8 percent rated it as "very important" and the remaining 19.2 percent rated it as "important" in affecting charitable contributions. Among the responding artists, 77.7 percent felt the income tax to be of considerable significance with 37.0 percent marking it as "very important." For both artists and museums, as indicated by Table 6.7, the mean response for income taxes placed more importance on their influence than on the influence of any of the other factors.

Estate planning was rated as second in importance by each of the categories within the field of art. Artists placed its importance at a level which was very close to that of the income tax factors, and in fact estate planning was marked as a "very important" factor by more artists than were any of the other items.

While artists and art museums were in agreement that taxes were the most prominent factors in motivating donations to philanthropy, the application of a chi square test revealed that there was a significant difference in their replies. With a degree of significance well within the 0.05 limit (the actual determination was a 0.0069 level), it could be stated that art museums rated income taxes as greater in importance than did artists. This appeared to be primarily due to the large percentage of art museums which marked "very important," while the artists were not as strong in their responses.

Artists also placed less importance on the influences of prestige and habit as influences on decisions with respect to charitable giving. A chi square test disclosed that the significance level of the differences in responses was less than 0.05 for each factor, with levels of 0.0277 for the importance of prestige and 0.0048 for the importance of habit. The probability that the differences could be attributed to chance was thus less than five percent. In each case the art museums gave "important" as the most common characterization of the meaningfulness of these two factors, with the dispersion being relatively symmetrical, although somewhat away from importance in the case of habit. Artists varied extensively in the importance which they

indicated that they placed upon prestige and recognition. A significant percentage marked each of the four choices permitted, with "modestly important" being most commonly marked. The factor of habit or continuation of a lifelong pattern of giving was checked as "important" or "unimportant" by approximately the same number of artists, and was not described as "very important" by any of them. Habit was, in the aggregate, indicated by artists to be the least important of the six factors when making contribution decisions.

In conclusion, artists and art museums were in substantial agreement that the most significant of the factors in regard to donation decisions was the income tax law. They differed, however, on the degree of importance of the income tax; museums perceived it to be more influential than did artists. Likewise, museums ascribed greater importance to both prestige and habit as decision factors.

The above conclusion that income tax factors influence donation decisions was further strengthened by the responses to question fifteen: "From your experience, which of the following best indicates the effect of income tax factors upon donations of ordinary income property?" The first of the three possible responses stated that the charitable contribution deduction had little effect, so that its removal would not substantially affect the level of donations. As can be seen from Table 6.8, it was the least frequently marked of the responses, with less than 10 percent of each category marking this choice. The next possible response was that tax implications did not affect decisions to make gifts, but did affect the choices of the

Table 6.8. Responses on the Effects of Income Tax Factors on Donations of Ordinary Income Property

Response	Artists	Art Museums
Largely illusory	9.1	0.0
Affects amount	22.7	13.0
Affects decision to make and amount	68.2	87.0

Source: Survey of Art Museums and Artists; responses to the question, "From your experience, which of the following best indicates the effect of income tax factors upon donations of ordinary income property?"

amounts of the gifts. The percentage of respondents selecting this alternative was also not large, as only 22.7 percent of the artists and 13.0 percent of the art museums chose this response. The third option was the most commonly chosen. It asserted that the decisions about making a gift and also about the amount of the gift were both affected by any underlying tax implications. This option was selected by over two-thirds of each category of respondents, including 87.0 percent of art museums. A summary of responses is displayed in Table 6.8.

Extension of Remarks Regarding Estate Planning

The narrative portions of the survey instrument drew many comments from artists reinforcing the importance to these individuals of estate planning as a contribution decision factor. In particular, there seemed to be strong sentiment which opposed taxing unsold works at their appraisal value.

In the section which provided for further comments, one artist expressed this opinion: "The law should be changed or amended regarding a deceased artist's works of art inherited by his heirs. It works a hardship on the heirs to have to pay a tax on the works of art. A tax should be collected only on art that is sold." This quotation, the essence of which was that any tax on unsold art works was an unfair hardship, captured the core of several replies. Another artist wrote that "It is unfair to tax families on the death of an artist

for the potential value of his unsold art works." Still a third comment accented the point: "It is patently dishonest to tax on the basis of appraised value a deceased artist's unsold works. At my age every work of mine that is unsold becomes a frightening liability."

The previous responses all indicated dissatisfaction with what might be a liquidity problem. That is, they pointed out that the value was in the form of unrealized appreciation. One other artist who noted the issue then extended his remarks to indicate the personal dilemma which resulted.

I am 65 years old and at the peak of my skill as a painter, writer, and poet. But it has taken 40 years of hard work, often with not one dollar of income from my art and writing

When the Smithsonian bought one of my (1950) paintings (in 1970), this tripled the value of paintings I have paid storage costs on for years. Now, every time I make a painting, under the current interpretation of the law, it costs my four children \$500 to \$3,000 deducted from my estate. All my unsold manuscripts (now that some are selling) are also costly to them.

It was hypothesized that the estate tax factor would be more important to older artists. This seemed to be corroborated by the fact that the four remarks just quoted were all made by artists over fifty years of age. This was not confirmed, however, by the responses to the question which specifically asked about the important of tax factors. When the replies concerning estate planning were analyzed according to the age of the respondent, there was no significant difference in reply by age category at the 0.05 level (using the chi square test).

Effort to Obtain Dollar Information

The second part of the questionnaire requested the responding institution to provide dollar information about total charitable contributions received and total donor-created property contributions received for several recent years. Despite the urging that the respondents provide reliable estimates of actual figures could not be obtained, very few of the art museums completed this section. A number of responding museums commented on the reason this portion of the questionnaire was not completed, with the explanation invariably indicating either that the requested information was not available or that the information was not reasonable to obtain because too much time would be required to gather it together. One art museum, for example, stated: "I regret that some of the information you request is not available, as it would simply take far too much limited staff time to produce this."

Another response suggested that there was a recordkeeping problem.

Since coming to this institution a few months ago, I have myself attempted a few surveys with questionnaires, most of it along slightly different lines than this survey. My most meaningful impression from all of that was the great variation in the ways insititutions (at least art museums) maintain records . . .

As the comment indicated, this individual also found that the records of art museums were such that obtaining hard information from them was a significant problem which limited the work which could be done in this area. The results of this survey suggested that it was not

necessary to limit these comments to art museums either. The responses by the other categories of institutions were equally unsatisfactory in so far as providing usable dollar information was concerned. University libraries and government archives also cited lack of records or lack of records in a form such that the data could be retrieved. As was mentioned earlier in this chapter, the high "no opinion" response to the statement about the experience of the individual institution due to the 1969 law change was consistent with the finding that record-keeping practices by these institutions might be inadequate.

A comparable section was included in the survey instrument which was sent to artists. The questionnaire asked that the artists give information concerning their charitable contributions during several recent years. As in the case of institutions, artists were invited to use reasonable estimates if it were not practical to find the exact information. Again, however, few respondents returned the information which had been requested. Some of the marginal notes which were made suggested two reasons which contributed to the poor response to this section. One reason given for not completing this part of the questionnaire was that some artists regarded this type of information as confidential in nature. They chose to exercise their prerogative of not disclosing the information even though they had been assured of anonymity. Another cause which was evident in some instances was that some artists did not know or have a good estimate of the amount of their donations and were not willing to undergo the inconvenience of reviewing their records. In either situation, the result was that

information of this nature could not be obtained as part of the study.

Papers and Memoranda

General information about the effect of the Tax Reform Act of 1969 on charitable contributions of personal papers and memoranda was obtained from responses to the August questionnaire. This was gained from the replies made by the government archives and the university libraries. The replies did not segregate the effect on nonpolitical papers, however, so that the results could serve to raise possibilities but could neither prove nor disprove them.

To question eight, "The Tax Reform Act of 1969 has caused a general decline in donations of ordinary income property," both groups had a tendency to agree. Among responding university libraries, 41.2 percent strongly agreed with the statement, while 29.4 percent tended to agree that there had been such a decline. This meant that a total of 70.6 percent of answering university libraries believed that the Tax Reform Act had resulted in reduced donations of ordinary income property. Additionally, 23.5 percent marked "no opinion" to this question, so that only 5.9 percent expressed any disagreement. Government archives also did not dispute the statement, with but 8.3 percent of these institutions dissenting. The agreement was not quite as strong, however, as 50.0 percent concurred that ordinary income property giving had declined due to the 1969 Tax Reform Act and 41.7 percent designated no opinion. These results are summarized in Table 6.9.

Table 6.9. Responses of Government Archives and University Libraries on Whether the Tax Reform Act of 1969 Caused a Decline in Donations of Ordinary Income Property

Response	Government Archives	University Libraries
Strongly agree	25.0	41.2
Tend to agree	25.0	29.4
No opinion	41.7	23.5
Tend to disagree	8.3	5.9
Strongly disagree	0.0	0.0

Source: Survey of Government Archives and University Libraries; responses to the statement, "The Tax Reform Act of 1969 has caused a general decline in donations of ordinary income property."

The government archives did not believe that their own experience had indicated any change in receipts of ordinary income property because of the 1969 law change. This was evidenced in their answers to question ten, which concerned the effect of the 1969 Act on giving by donors of the respondent institutions. As Table 6.10 shows, only one-fourth of the state archives which replied were able to identify a "personal" effect. On the other hand, 41.7 percent did not know and 33.3 percent disagreed that there had been any effect to them because of the new ordinary income property provision.

The university libraries who responded seemed to be more affected than the responding government archives by the changed tax treatment for donations of ordinary income property. Of the university libraries, 64.7 percent or more than two and one-half times the

Table 6.10. Responses of Government Archives and University Libraries on Whether Giving by Their Donors Changed as a Result of the Limited Deductibility of Ordinary Income Property Donations

Response	Government Archives	University Libraries
Strongly agree	16.7	23.5
Tend to agree	8.3	41.2
No opinion	41.7	23.5
Tend to disagree	25.0	11.8
Strongly disagree	8.3	0.0

Source: Survey of Government Archives and University Libraries; responses to the statement, "Donors to my institution have changed their giving patterns due to the influence of the limited deductibility of ordinary income property donations."

percentage of state archives were aware of altered giving patterns.

Only 11.8 percent of university libraries disagreed that there had been any effect.

While the information obtained from the questionnaire responses did not allow a determination of the cause for the discrepancy in answers between state archives and university libraries, several other factors should be noted. The government archives, to the degree that they were involved with ordinary income property, seemed to be involved mostly with political materials. University libraries, by contrast, were more varied in their scope of activities and interests. In particular university libraries would be more likely to collect manuscripts of contemporary writers. Thus the replies of the state archives

might be indicative of the lack of any substantial change in the charitable donation of the professional papers of politicians. The responses of university libraries might also be consistent with such a situation, with the changes that they have observed being the consequences of alterations in the receipt of other forms of ordinary income property. The materials of literary figures would be the logical possibility since such items would be directly pertinent to the purpose of these organizations.

As was true with artists and art museums, the questionnaire attempted to place the income tax factor in perspective by asking about the various factors involving donations. The results are presented in Tables 6.11 and 6.12.

The responses of government archives and university libraries indicated that the factors of most importance in influencing donations to such institutions were income tax factors, prestige and recognition, and prior association with the organization. Income tax factors were rated as most important by university libraries, as they were by artists and art museums. Government archives, however, gave a higher rating to prestige than to income taxes. This was the only instance in which any factor received a higher importance rating than income taxes. Estate planning was not indicated as being as great in influencing gifts to these institutions as it was in the case of works of art and was marked "unimportant" by 25.0 percent of government archives. The responses suggest that donations to universities and archives may not be as strongly influenced by income taxes relative to the influence of

Table 6.11. Responses of Government Archives and University Libraries on the Importance of Various Factors in Influencing Contribution Decisions

	Very Important	Important	Modestly Important	Un- important
Government Archives				
Income tax factors	54.5	18.2	18.2	9.1
Estate planning	41.7	16.7	16.7	25.0
Prestige; recognition	n 58.3	25.0	16.7	0.0
Habit; continuation of lifelong patter	n 16.7	33.3	33.3	16.7
Moral commitment	16.7	58.3	16.7	8.3
Prior association with organization	50.0	16.7	16.7	16.7
University Libraries				
Income tax factors	47.1	41.2	11.8	0.0
Estate planning	29.4	35.3	29.4	5.9
Prestige; recognition	n 35.3	35.3	17.6	11.8
Habit; continuation of lifelong patter	n 17.6	29.4	52.9	0.0
Moral commitment	18.8	37.5	31.3	12.5
Prior association with organization	35.3	41.2	17.6	5.9

Source: Survey of Government Archives and University Libraries; responses to the question, "According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions?"

Table 6.12. Average Responses of Government Archives and University Libraries on the Importance of Various Factors on Donation Decisions

Response	Government Archives	University Libraries
Income tax factors	1.818	1.647
Estate Planning	2.250	2.118
Prestige; recgonition Habit; continuation of	1.583	2.059
lifelong pattern	2.500	2.353
oral Commitment	2.167	2.375
with organization	2.000	1.941

Averages were determined by counting "very important" as 1, "important" as 2, "modestly important" as 3, and "unimportant" as 4.

Source: Survey of Government Archives and University Libraries; responses to the question, "According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions?"

other factors. In particular, the combined forces of prestige and organizational affiliation may have acted as a strong incentive and reduced the effect of income tax consequences on charitable contribution decisions.

Effect on Political Figures

Useful information bearing upon the effect of the 1969 tax law on charitable gifts of political papers was gathered from two inquiries. One source of data was a mail survey which was sent to selected university foundations. The other was through responses to requests for information from selected contemporary political figures of national significance.

While the surveyed university foundations expressed some concern about the restrictive nature of the tax law change, the responses to the university foundation survey gave strong evidence that they had observed no significant effect on charitable donations of personal materials by politicians. Forty foundations responded to the questionnaire, with twenty-seven (67.5%) indicating that there had not been any change of importance in the receipt of donor-created property from political figures.

The replies of the foundations were unequivocal in their statements that they had seen no alteration in the receipt of political materials. Some respondents, such as the following, were quite specific in their comments.

We have no concrete evidence that the 1969 tax reform act has directly affected our receipt of personal papers from political figures. People who had begun donating material prior to the law have continued to do so even though there was no specific commitment to do so. Also, within the past two years, we have received the papers of two major political figures (one local, one national) and the promise of the papers of a third figure within the near future. Finally, there have been two offers of the political papers of two state-level politicians which we have declined.

The following sample of responses discloses the flavor of sentiment as to the absence of any noticeable effect on giving:

We have received many papers and memoranda since the 1969 Tax Reform Act became effective. We do not feel that it has adversely affected the University of . . .

The 1969 Tax change has not affected giving to our foundation in any way.

In short, the tax law has not affected the collecting of personal manuscript collections at the University of . . .

I am not aware of the loss of any lifetime gifts of personal papers from political figures because of the restrictions imposed by the Tax Reform Act of 1969.

I am not aware of a single instance at . . . University and at the University of . . . where I was prior to coming here, that the provisions of the '69 Act affecting the gift of personal papers has had any effect whatsoever on the decision of those people who wish to have their papers preserved or whose papers the University wishes to acquire. I have never been a part of any conversation at any national meetings or in my conversations with my colleagues where the ramifications of this change were brought up as an apparent issue. I would have to say that portion of the '69 Act referring to personal papers has had absolutely no effect on anyone's decision as to whether to give the papers or not.

In completing the questionnaire, several respondents expressed professional judgments about what the explanation might be for the continued donation of personal papers by politicians. Their observations refuted the prominence of tax factors in motivating such contributions, suggesting instead that the inducement was a concern with the proper preservation and dissemination of historically significant materials.

We have seen very little effect of this law on the intention of donors to deposit manuscript materials in this library. To most, the purpose of the donation is to assist research, not to gain a tax benefit. It would be useful, I think, if we were permitted to offer an additional incentive of this sort, but we have not found its absence to be detrimental to our collecting efforts.

In addition to the twenty-seven respondents just discussed, there were six who declined to make a judgment about their individual experience. These six, who accounted for 15.0 percent of the total, indicated that they felt themselves to be too limited in experience with such materials to express a meaningful opinion. Thus, a total of

82.5 percent of the respondents could not identify a change in the pattern of receipts of political papers.

Several replies indicated no concrete evidence of decreased donations of political materials but did express opinions that the restricted tax deductibility had made such contributions more difficult to obtain. One institution, for instance, made the following statement:

I am sorry that I cannot provide any concrete evidence that the 1969 tax law has affected negatively donations of personal papers to the University of . . . I believe that it has, but I simply have no supporting data.

Only ten percent of the responding institutions testified to having evidenced any concrete effects of the new tax provisions. Of these, one-half stated that the effect was in the form of having the gifts delayed. The remaining respondents spoke of the new law as being a barrier to such giving. One, for example, said that the new provision "constituted a moderate obstacle" to eliciting gifts from politicians.

The results of the university foundation survey, as it relates to this point, are presented in Table 6.13. The figures illustrate once again the conclusion that there did not appear to have been a significant reduction in the donation of political papers as the result of the Tax Reform Act of 1969.

It was also informative to look only at those institutions who indicated that they could reply based upon sufficient experience. This removed those who indicated a lack of experience and those who expressed

Table 6.13. Responses of University Foundations on the Effects of the Tax Reform Act of 1969 on Donations of Political Papers

esponse	Percentage
o significant effect	67.5
or little experience	15.0
oubtedly more difficult	7.5
ts are delayed	5.0
derate obstacle	2.5
gnificantly discourages gifts	2.5

Source: Survey of University Foundations; summary of responses to the statement, "Discuss how the tax change referred to above has affected lifetime gifts of personal papers to your institution by political figures."

general opinions unrelated to personal evidence, thus reducing the relevant group to thirty-one. Of these, 87.1 percent evidenced no significant effect on political papers donations as a consequence of the law change.

In order to gather information about political papers from the perspective of donors, a mailing was made to a selected number of national politicians. Those contacted were former President Gerald Ford, former Vice-President Nelson Rockefeller, former Vice-President Hubert Humphrey, and the retiring members of the United States Senate. The replies of these politicans were virtually unanimous in their indication that their papers would be donated to public institutions.

Evidence from the U.S. senators who did not seek re-election in 1976 strongly reinforced the conclusion that the existing tax treatment might not be a significant factor in the ultimate disposition of political papers by such individuals. Five of the retiring senators responded to an inquiry about their intentions in this matter, with each indicating that the decision as to the disposition of his papers was not affected by the charitable deduction provisions. Senators Paul Fannin, Hugh Scott, and John Pastore were making current donations of their senatorial papers to Arizona State University, the University of Virginia, and Providence College, respectively. Senator Roman Hruska had already given a large part of the papers and records associated with his elected public service to the Nebraska Historical Society and would contribute the remainder when existing needs for their use had been fulfilled. He indicated that there were some restrictions on the public availability of some items in order to protect the privacy rights of the other persons. Senator Hiram Fong wrote that he would be building a library and museum to house the materials related to his public life.

Former Vice-President Nelson Rockefeller was also contacted, but his counsel replied that a final decision about the disposition of his records had not been made. For the moment, Mr. Rockefeller was taking his papers with him and giving some to either the National Archives or the Library of Congress.

Former Vice-President and current Senator Hubert H. Humphrey of Minnesota indicated that all of his papers were on file with the

Minnesota Historical Society. Restrictions to access were contractually agreed to in 1966 and, basically, required prior approval from both Mr. Humphrey and the Society before any of the documents could be published.

The disposition of the Ford papers was one additional indication that the donation of political papers was an act which was independent of tax implications. On December 14, 1976, President Gerald R. Ford gave the United States Government the historical papers and other political materials associated with his years of public service. The gift involved approximately 25-30 million pieces of paper and was quite exhaustive as to what was included.

By his deed, President Ford gives the United States all of his papers, documents, correspondence, films, recordings, works of art, and similar historical materials that relate to his candidacy for and election or appointment to public office, including his service as a Member of Congress, Vice-President, and President and to his other political and public activities since 1948. The gift includes papers documenting President Ford's service in Congress, which are now deposited at the University of Michigan. The gift excludes certain personal papers and possessions, such as those President Ford received from his family. In the future, the President may give additional materials to the Government under terms of this agreement (Office of the White House Press Secretary 1976a, p. 1).

The circumstances and terms surrounding the donation were, in the opinion of James B. Rhoads, Archivist of the United States, quite favorable.

This is the first time that a President has made an outright gift of his papers while still in office, and thus assures an unbroken chain of Federal custody of them. The terms of the donation also called for a prompt start on archival processing and the availability of almost all of the papers after no longer than 13 years. These provisions plus the

university location insures speedy and broad accessibility for scholarship and protection of the public interest in preserving the papers of the President (Office of the White House Press Secretary 1976b, pp. 1-2).

Materials which were to be closed to the public were those which related to personal, family, and confidential business affairs or personal matters, involved communications made in confidence, might be used to harass or injure persons, were prohibited from disclosure by law, might affect foreign relations or national security, or were security-classified.

Effect on Literary Figures

Some comment seems appropriate in regard to the disposition of literary manuscripts by writers. While donations by authors are generally treated only be inference in this report, the frequency with which they were referred to by university foundations cannot be ignored. Although they were not mentioned in the questions, fifteen percent of the foundations nonetheless chose to comment on the ill effects which the 1969 Tax Reform Act had in this area. Particular note was made of the fact that writers were making loans of their literary materials rather than giving them outright. Additional respondents mentioned in answering part two that gifts of literary manuscripts from writers were harder to obtain, so that unsolicited comments about this type of property were made by one-fifth of the responding university foundations.

As an example, the following two paragraphs headed the reply of one respondent:

The Tax Reform Act of 1969 was a complete disaster for the Humanities Research Center with respect to donations by writers, and I suspect that other libraries have suffered equally. As an example, a number of writers, including . . . , were making regular yearly donations to the Humanities Research Center for which they were permitted to make tax deductions. These stopped completely when the Tax Reform Act of 1969 became law.

As you know this law provided that the writer could only take as a tax deduction the actual value of the ink and paper, which effectively altered the situation. Although many writers continue to deposit materials in the library, it is clearly understood that these materials are still the property of the writer and not of the Humanities Research Center. They are free to remove it at any time, and if a situation develops in which it will be to their advantage to do so, this is very likely to happen. Many writers simply discontinued sending material of any sort.

This statement indicated that there were at least two alternatives which writers might choose over donating materials. One option was to place them on loan with an institution with the understanding that future disposition was dependent upon the desires of the writer. The other alternative was for the writer not to make the material available to the institution in any manner. Another response seconded these assertions.

As far as I can tell, the Tax Reform Act of 1969 has had little or no effect on our receipts of politicians' papers. It has had a perfectly appalling effect on our receipt of gifts of writers' papers. We have received no such gifts since the law took effect; even our established donors converted their gifts from gifts to deposits and are quite frank about the possibility of selling their manuscripts if the law is not changed within a few years.

A third respondent wrote of three examples which were characterized as representative of the effects which the institution had

experienced. The reply spoke of three sets of materials which had been pledged to the university.

All three of these withdrew their offers. In numerous other instances I have urged prominent people to deposit their papers on loan in the hope that these will be given, if and when the tax law changes. But such loans are very unsatisfactory since we are unwilling to go to the expense of cataloging collections that may well be withdrawn, so essentially such papers remain unused and unknown while temporarily in our possession.

As such responses suggest, the effect of the 1969 Tax Reform

Act may have been extremely harsh on institutions which collect materials of this nature. The result in some cases was that creative individuals were not making materials available to these organizations or were doing so only in the form of a loan. While the loan was the more desirable of these alternatives from the viewpoint of the institution, receiving materials in the form of a loan was still less than satisfactory since the retention of the materials was uncertain.

Summary

The responses of art museums and artists showed that the Tax Reform Act of 1969 had a detrimental effect on the donation of works of art to museums by the creating artists. Evidence strongly suggested that tax factors had been instrumental in encouraging artists to make contributions of their works, but that the 1969 Tax Reform Act violated Congressional intent by discouraging donations of owner-created works of art. Such donations did not occur at the same rate in the absence of an adequate tax incentive to give.

Artists and art museums each emphasized the importance of taxes in affecting contributions with which they were familiar. Such indications were consistent with the findings that the restricted deductibility of ordinary income property seemed to substantially reduce charitable gifts of owner-created art works.

Unlike donations of works of art, gifts of political materials did not seem to have been affected by the Tax Reform Act of 1969.

Donations of papers and other professional materials by political figures were not significantly reduced since the 1969 tax law changes were made. There was therefore no conflict between the Congressional intent of encouraging charitable contributions and the effect of the 1969 Act on donations of political papers.

There was strong evidence from survey results and the replies of politicians that contributions of this nature were made for reasons other than the implications of income taxes, and that the tax expenditures were thus a revenue loss to the federal government which was not justified in terms of resultant benefits. Government archives and university libraries indicated that the elements of prestige and prior association with the institution were, along with income tax factors, of considerable importance in affecting gifts of personal papers.

Responses to the questionnaires suggested that donations of the personal materials of literary figures may have been materially influenced by the restricted deductibility of ordinary income property. While information about contributions from writers was not specifically requested in the surveys, numerous replies included observations that the 1969 Tax Reform Act had a detrimental effect on the level of contributions of such materials.

CHAPTER 7

AN ANALYSIS OF CURRENT AND ALTERNATIVE TAX PROVISIONS FOR CHARITABLE CONTRIBUTIONS OF ORDINARY INCOME PROPERTY

The current tax treatment accorded donations of ordinary income property has resulted from Congressional efforts to balance two somewhat diverse goals. The provision is an attempt to prevent unjustified taxpayer benefits while continuing to provide sufficient benefits to act as incentives for charitable contributions. Individuals place different emphases upon these two important but conflicting needs. The effect is that numerous alternatives have been offered as substitutes for the current provision with supporters claiming each to be better able to accommodate these objectives.

In seeking to properly evaluate the possible alternatives in promoting gifts of donor-created property, it is well to remember the simple statement of the objective which was made in a plea to Congress by Mr. Cyril Miller in behalf of the Southwestern Union Conference of Seventh-Day Adventists (U.S. Congress, House, Committee on Ways and Means 1969a, p. 1714).

It is our prayer that you find a creative way to curb the abuses by a few and still offer tax incentives for charitable gifts to the majority who are properly relating to the law in fulfilling their responsibilities to society by supporting charitable and religious organizations.

The body of this chapter is composed of three parts. The first two discuss, in order, the general categories of alternatives which were treated and the criteria by which they were evaluated. Individual alternatives are then discussed in terms of the common criteria.

General Categories of Alternatives

The first proposal which is discussed is a deduction for the adjusted basis of ordinary income property. This is the current law for such donated property. Upon evaluation of the effectiveness of this provision, alternatives are analyzed.

Consideration as to a preferable alternative for the treatment of ordinary income property donations is then analyzed, beginning with the relative desirability of objective versus subjective standards. This perspective is realized by analyzing one subjective proposal and generalizing the conclusions.

Discussion next turns to the relative merits of using an income tax incentive against those of applying the incentive through the estate tax approach. Again a specific example is used which allows the conclusions to be generalized.

The remaining proposals are divided into three categories. The first category consists of proposals involving deductions based upon fair market value. Included are the charitable contributions laws which existed before the Tax Reform Act of 1969, along with some possible modifications.

The remaining two groups of resolutions would provide a credit rather than a deduction for gifts of ordinary income property. The first resolution would compute the credit by using the adjusted basis of the property donated. The other approach would calculate the tax credit permitted by using the fair market value of the property at the time it is given.

These proposals are the most commonly discussed, but not the only, alternatives. New options could readily be devised, but it would not be practical to attempt to discuss an exhaustive list of alternatives. By restricting analysis to the options indicated, attention can be directed to those proposals which seem most feasible. Furthermore, many of the other alternatives which might be offered are simply more complex variations of the above proposals.

Evaluation Criteria

Three major criteria were applied in evaluating the various alternatives which have been identified. These criteria were developed to insure that proposals were determined to be acceptable only if they were consistent with Congressional objectives. Because one goal of Congress with respect to the entire tax law is simplicity, each alternative was rejected unless it was determined to be feasible to administer. A key criteria required that the alternative be simple to understand and easy to compute. This requirement indicated the desirability that the same computation be required of all taxpayers and that there

be no choice left to the taxpayer (such as electing whether to take a deduction or a credit).

Each of the acceptable alternatives must also have provided the necessary incentive for giving, since Congressional intent indicated this effect to be the ultimate justification for any tax benefit for charitable contributions. This required that the influence of extraneous factors be considered. These are items which threaten the link between the tax benefit granted and the effect on charitable giving. This test also tended to favor those alternatives which related the size of the tax benefit to the economic benefit which accrued to the institution.

The alternatives were finally evaluated in terms of any undesirable side effects which were present. Such a criterion was appropriate because the intent of Congress was that the deduction for charitable contributions should not be an area open to taxpayer abuse. There needed to be a determination, for example, of whether the benefit was independent of the tax bracket of the donor so that the benefit in actual dollars was not greater for those with large incomes. It was also important to consider whether property was treated more favorably than cash when donated, such as by granting benefits that related to untaxed income. Proposals were also evaluated as to whether a donor could make a profit through a charitable gift rather than a sale. Additional criteria would also be relevant, such as determining if, due to a provision, charitable giving could reduce the taxes of an individual to zero (or an unacceptably small level).

Deduction for Adjusted Basis

The alternative which Congress chose to enact in 1969 was to limit the deduction to the adjusted basis to the donor for gifts of ordinary income property. This eliminated any meaningful amount from being deducted when such property was donated. An artist, for instance, would be limited to deducting the cost of paints and canvas.

The use of cost was administratively simple since the calculation was based on historical information which could be verified. It was based upon objective facts rather than a subjective valuation and involved no new calculations since this was the same figure which would have been computed if the asset had been sold.

The second advantage of cost was that it did not lead to some of the negative qualities which might appear under other conditions. The opportunity to profit by donating property to charity was eliminated, for example. This could be expected to eliminate any taxpayer morale problem from the general public as well, at least in terms of this particular area.

Since the tax treatment was still in the form of a deduction, there remained a small amount of vertical inequity. It did not appear to be serious enough to warrant criticism, however, since the amount of deduction was so minimal. The disparity which had existed between property donations and cash and service donations, on the other hand, was entirely eliminated. This resulted from the fact that in all of these situations the deduction would be based upon out-of-pocket costs.

The primary disadvantage of this alternative was that it removed any tax incentive for donating ordinary income property. The deduction would be zero for political papers and would approach that level for works of art. It was therefore ineffective in performing the encouragement function which was central to the intent of Congress that the tax system motivate taxpayers to make contributions to philanthropic organizations.

For political papers, this adverse provision was not objectionable because evidence indicated that tax advantages for such papers were unessential. As the survey results of Chapter 6 indicated, the recipient institutions for political materials have noticed no significant effect in donations of the papers of political figures since the Tax Reform Act of 1969 took effect. This data, along with the information supplied by public officials about the disposition of their papers and memorabilia, obviated the need for a tax inducement. Other forms of motivation, such as prestige and the desire to preserve history, appeared sufficient to bring these assets into the nonprofit sector and so to make them accessible to the public.

There was strong evidence to suggest that the introduction of the deduction for adjusted basis had a deleterious effect on gifts of donor-created works of art. Questionnaire responses, as described in Chapter 6, indicated that art museums were receiving fewer donations from artists as a consequence of the new law. Tax factors appeared to be extremely important in provoking artists to donate rather than sell or keep their creations. This signified that the current tax law has

been inappropriate for works of art donated by their creators because it has not assisted in fulfilling the Congressional objective of encouraging charitable contributions.

Differentiate Based on Motive

Mr. Herman W. Liebert, librarian at the Beinecke Rare Book and Manuscript Library of Yale University, proposed that a subjective test be used to discriminate among donations.

It is a matter of great difficulty to determine the criterion for tax liability on account of gifts. I suggest that the fairest criterion might be the motive for which property is acquired. If property is a grandfather's diary, of no monetary value when it was created, preserved by family piety, later proved to be of both historical and financial value, or if the property has been collected by purchase for scholarly purposes and has incidentally increased in value, then it would be possible to find a form of words for a test which would preserve the scholarly value permanently by gift to an institution without incurring a tax liability.

I do not pretend to be a legislative draftsman. I would not presume to tell this committee how the just distinction I perceive between the profit motive and the true collecting motive should be translated into statute (U.S. Congress, Senate, Committee on Finance 1969a, p. 6040).

This alternative had certain instinctive appeal due to the rewarding of those contributions which are independent of any monetary motive, but it also had a number of significant disadvantages. Mr. Liebert, in fact, suggested some of them through his remarks.

Placing the distinction between "good" and "not-so-good" motives into law is a task that is easier proposed than accomplished.

While the result might be fair, it was not clear that there was equitable vehicle which could be used to achieve such a result.

There are many other areas of the Code where motive is a determinative factor. One such area deals with the distinction between profit and hobby motives.

If an activity is engaged in for profit, the expenses related to such activity are deductible under either Sec. 162 (business expense deductions), or Sec. 212 (investment expense deductions), whichever is appropriate. If an activity is not engaged in for profit, however, the related expenses are personal in nature and are for the most part (except for such items as interest and taxes) nondeductible.

The difference in treatment has led to a great number of court cases between the IRS and the taxpaying public, particularly in such areas as farming and ranching. The taxpayer argues that the activity is not-so-successfully engaged in in order to make money, while the Internal Revenue Service counters that the taxpayer is attempting to have the government subsidize a hobby.

The courts, in resolving these matters, found no single factor which could be said to be of supreme significance and thus to provide the basis for a general rule. Therefore, it was necessary that each case be resolved on the basis of the particular circumstances that existed relative to the case.

In an attempt to reduce the degree of conflict, Congress inserted Sec. 183 into the Code in 1969. This provision established an objective test for placing the burden of proof. Basically, the taxpayer assumed the burden of proof unless he had shown a profit in at least two of the preceding five tax years. But, while this section

established some ground rules, it did not entirely remove the controversy in separating hobbies from business activities.

Extrapolating from the "hobby loss" situation, analogous problems could be envisioned in the realm of contributions. No simple
statement that motives will determine would be sufficient, as it would
lead to differences in interpretation and so to court litigation. The
adverse publicity might be as great as or greater than that which preceeded the 1969 law change in this area. Establishing objective rules
would seem to be as much a problem with respect to charitable donations
as it was in the area of hobby losses, so the only alternative would be
to structure the Code section with objective standards which would
identify the party to assume burden of proof. This type of solution,
given the diversity of properties and circumstances involved, would
undoubtedly require an undesirable degree of complexity if it were to
be equitable.

In conclusion, Mr. Liebert's proposal that the law differentiate based upon motivation—as well as other suggestions which would call for the application of a subjective test—seemed questionable as an appropriate measure. The administrative problems inherent in such proposals might far outweigh the desired benefits.

Estate Tax Deduction

Another alternative would be to provide estate tax relief rather than income tax relief. Such a provision might stipulate, for example, that the estate of a taxpayer could be reduced by the fair

market value of any lifetime donations of ordinary income property, with the amount not having to be included in the gross estate of the taxpayer.

A provision of this nature should not be confused with the current charitable contributions benefits which are allowed under the unified estate and gift tax laws. The current law provides a tax incentive in two ways. One benefit currently in existence is that the estate of an individual may be reduced for federal death tax purposes by the fair market value of any testamentary contributions to philanthropic organizations. Since the amount of the estate would include the value of the property owned and donated at death, the effect of the deduction is to remove from taxation that portion of the estate which is contributed to charitable causes. The second benefit applies to lifetime charitable gifts. Such transfers, since ownership is relinquished by the owner prior: to death, are not included in the estate. Furthermore, they are not considered to be taxable gifts. These lifetime donations thus receive the benefit of never being added into the amount subject to the unified estate and gift tax.

An estate tax deduction for lifetime gifts, as distinguished from the current provisions, would grant tax benefits in two ways for the same donation. A lifetime donation would recieve the advantages of both the noninclusion in the estate which is currently accorded to lifetime contributions and the deduction which is presently allowed for testamentary donations.

The proposed treatment would regard ordinary income property as a part of the wealth rather than a part of the income of an individual. It would provide a trade-off whereby a taxpayer could, through lifetime donations to charity, shelter other assets from dilution from a tax at death.

One disadvantage of this approach was that the tax benefits were (or might be) remote. The extent to which an incentive would be present would be dubious because the donation decision might be affected by new factors such as age and general health. An eighty-year-old artist may be quite anxious to make a donation of personally created works of art immediately. If the artist has a thirty-year-old grand-child who is also an artist, however, the grandchild may prefer to retain his (or her) personal creations in the hope of donating them at a later time when the artistic reputation of the grandchild and the value of the art works have increased. The grandchild would thus have the benefit of their possession for some years and also a larger tax benefit.

An unknown factor which might be a disadvatange was that the incentive would be dependent upon the size of the estate of the taxpayer. The first problem that this presented was the matter of uncertainty. The taxpayer might have little idea of what size estate to anticipate, and thus could not reasonably assess the tax benefit which might be obtained. This would be particularly true of a younger person. The second problem was that the estate tax offers ample opportunity for tax avoidance through foresight and careful planning. Thus, the

addition of another technique for estate tax reduction in the form of a charitable contribution deduction of this sort might be a very modest incentive.

The estate tax, then, did not appear to be a proper means by which to encourage lifetime giving. Such an approach appeared to be handicapped by an inability to meet the Congressional objective of providing an appropriate incentive to encourage private donations to charitable institutions. While it would have to treat ordinary income property as wealth rather than as income, many extraneous factors were introduced into the decision process of the prospective donor. Age, general health, and other estate planning circumstances all would influence decisions. The remoteness and uncertainty of the amount and condition of the estate at the time of death would have further reduced the usefulness of an estate tax benefit, as would the fact that few estates are actually faced with heavy taxes.

Income Tax Provisions

If the appropriate tax treatment of charitable contributions was to be determined through objective rules within the federal income tax system, then there had to be a consistent measurement procedure for any given category of donated property. The choices for the various forms of ordinary income property were either the adjusted basis (almost always the cost, and assumed to be so here) or the fair market value of the property.

A decision also had to be made concerning the type of tax benefit to be offered to those who made charitable gifts. One possibility was a tax deduction, which would result in a reduction of the taxable income and thus of the base to which the tax rates are applied. The other was a tax credit, which would result in a direct reduction of the tax liability.

The effect of these choices was that there were four major categories of tax incentives which might be offered. One alternative, a deduction measured by the adjusted basis of the property, was the provision enacted as a part of the Tax Reform Act of 1969. This alternative has already been discussed. The remaining three choises are analyzed below.

Deduction for Fair Market Value

One alternative within the federal income tax system would be to permit a tax deduction for the fair market value of the property. This was the law as it existed prior to the 1969 Tax Reform Act. As was noted in Chapter 5, however, such a provision had a number of shortcomings. These undesirable characteristics related to the failure of this type of provision to meet the intent of Congress that the deduction for charitable contributions should not be structured so that it could be misused by members of the taxpaying public.

The most serious weakness of the old law was that it allowed conditions to occur such that an individual could profit from a gift to

a philanthropic institution. This was a cost which could not be justified by the benefits as well as a threat to taxpayer morale.

Other negative characteristics of a deduction for the fair market value of the property included the violation of vertical equity and a tendency to cause property donations to be treated more favorably than gifts of either cash or services. Administratively, critics also alleged that there were sometimes valuation problems due to unjustifiably high appraisals.

Several changes in the law have been suggested which would maintain the framework of a fair market value deduction. These variations were attempts to modify the law so that the incentive would change as little as possible while still removing the problems. In this manner it was hoped that the effects of the deduction for charitable donations of ordinary income property would more closely parallel Congressional intent.

Eliminate the Profit Portion

Dr. Ernest L. Wilkinson was one of the advocates of retaining the same basic rule. Dr. Wilkinson, speaking to the Committee on Finance on behalf of The American Association of Independent College and University Presidents, urged that the problem of profit from philanthropy be treated directly. "The solution is simple. Disallow a portion of the deduction to the extent the donor makes a profit from the gift" (U.S. Congress, Senate, Committee on Finance 1969, p. 2065). Senator Jacob K. Javits of New York advocated that the same type of result be obtained.

While such a statement is simple in concept, the underlying calculations which would be required are not easily determined. In reality, two tax liability computations would be required, one if the donations were never made and the other if the donation were instead a disposition by sale—and neither based upon what actually occurred. Such a solution was therefore rejected as impractical. There is no method of implementing such a tax provision which would not be exceedingly complex.

Tax Neutrality Approach

Another modification of the fair market value deduction has been proposed in the form of a deduction of only a percentage of value. In a submitted statement, it was suggested by The Committee of Friends of the Museum of Modern Art that through such an arrangement a compromise could be achieved.

We recommend the application of the tax-neutrality approach . . . to contributions by artists. Specifically, contributions by artists to <u>public</u> museums would be deductible—wihtout recognition of income—but only as to a percentage of the value of the work contributed, that percentage to be fixed so that a top-bracket artist may achieve approximately the same after—tax return by contributing his work or by selling it. We think that such an approach will encouarge artists to make decisions as to whether a work should be sold or donated to a museum on the basis of non-tax considerations (U.S. Congress, Senate, Committee on Finance 1969a, p. 2630).

Given the current top marginal tax rate of seventy percent and the assumption that the owner has a zero basis in the property (the situation which would offer the greatest potential economic advantage to giving as opposed to selling ordinary income property), the equation indicating how the above approach would be put into practice can be indicated as follows:

Value of Selling = Value of Contributing

 $FMV - (FMV \cdot 50\%) = FMV \cdot 70\% \cdot x$

where

FMV = fair market value of the property on the date of donation

x = percent of FMV deductible for income tax purposes
Solving this equation for x, it can be determined that under the current tax rate structure a deduction would be allowed of five-sevenths
of the fair market value.

Such an approach was defended as a proper solution because it "would encourage a continued flow of contributions by artists to public museums but . . . would not accord a greater after-tax increment to an artist contributing a work than to an artist selling a work" (U.S. Congress, Senate, Committee on Finance 1969a, p. 2629).

While this arrangement would prevent profiting from giving, it would not eliminate some of the other problems. There would be a continuation of a number of undesirable side effects. The vertical inequity would still exist, for example. All deductions would be reduced by five-sevenths, but they would still relate to the tax bracket of the contributor. A taxpayer in the seventy percent tax bracket would now receive fifty cents of tax benefit for a one dollar donation. To the taxpayer in the thirty-five percent bracket, the tax benefit of a one dollar donation is twenty-five cents. Furthermore, although the difference would be reduced, there would remain an advantage to property

gifts over cash and service donations. The nonrecognition of the appreciation in value as income, coupled with the deduction of five-sevenths of the fair market value, would continue to provide a double benefit which would not be available to donations in other forms. The necessity to subjectively set values would also continue.

Another significant consideration was that the incentive to give would be relatively small for many donors. To a person in the 40 percent tax bracket, for example, the value of one dollar property donation would be less than thirty cents. A sale of the property would net sixty cents, or more than twice the return. Thus, the proposal would not only continue to lead to undesirable side effects, but would also reduce the incentive. This seemed entirely inconsistent with Congressional intent.

The complexity of such a tax law would be a final problem. It would be inequitable to demand that the taxpayer take a deduction for less than his adjusted basis, which could happen under this proposal. Developing a formula to overcome such a problem by taking both the basis and value into account would be possible, but it would not be a simple process for the taxpayer to apply.

Credit for Adjusted Basis

Another alternative would be to limit the tax benefit to the adjusted basis of the property of the donor, but to do so in the form of a tax credit rather than a tax deduction. The tax credit is a direct reduction of the tax liability and so would represent a dollar-for-dollar tax adjustment.

Because the tax impact would be based on cost, this proposal had most of the strengths and weaknesses of the present law. Like the current law, a tax credit for the adjusted basis of the property would remove the equity problems of giving a tax benefit for appreication which has never been taxed as income. However, such a provision also would have the disadvantage that the tax benefit would be neither strong nor related to the economic benefit received by the charitable institution.

The use of a tax credit would add the good quality that the tax benefit would not depend upon the tax bracket of the donor. This would not represent a significant advantage over the current law because, as was noted earlier, there is not enough of a dollar effect to present a serious degree of vertical inequity.

As suggested by this analysis, there would be no meaningful advantage to the use of a credit determined by adjusted basis rather than a deduction measured by adjusted basis. Each alternative would do equally well in meeting the objectives of Congress. Since the general charitable contibution provision involves the use of a deduction, consistency would dictate that the deduction be used whenever a credit was not a clearly superior technique. Such a choice would contribute to meeting the Congressional goal of seeking simplicity in the tax laws.

Credit for Fair Market Value

A final alternative would be to allow a tax credit for a percentage of the fair market value of the donated property. The law might provide, for example, that a tax credit shall be allowed in an amount equal to thirty percent of the fair market value of property which is donated to charity. Such a proposal has received some degree of support in recent years, including support from members of Congress.

The primary advantage of a fair market value credit was that it restored the tax incentive for artists to make contributions of their own works. The Congressional purpose for a charitable contribution provision would be met. Since the tax savings would relate to the fair market value, the aritst would receive some recognition for the time and talent involved as well as for the cost of the materials which were used. Likewise, the tax benefits which were created as a result of a donation would be directly related to the economic benefit which was derived by the philanthropic organization.

This treatment could also be supported in terms of equity.

Under these conditions, the government would share on a 30-70 basis the amount which was contributed to a charitable institution—regardless of the type of property or of the donating individual. By using a tax credit this proposal retained the favorable quality that the tax benefit was not dependent upon the tax bracket of the donor.

A tax credit based upon the fair market value of the donated property would be a compromise, however, since there would be some inequity reintroduced. There would be tax benefits which would relate to the appreciation of property which was not included in income. This would be an advantage that would be more valuable to high-inciome taxpayers than to low-income individuals. Property would also regain its

preferred status over cash and services due to the nonrecognition of appreciation as income. The overall effect cannot be generalized, and would be dependent upon the cost and value of the property and the tax bracket of the taxpayer.

There would be a small price in simplicity in adopting this provision for donor-created works of art. This complexity would occur because it would be necessary to integrate the credit with the general deduction given for other charitable contributions in order to apply the ceiling. Presumably this would be done by adding the qualified deductions to the total fair market value of the potential credits and applying the appropriate ceiling to the sum. To illustrate this point, assume that an artist has an adjusted gross income of \$80,000. The ceiling on the deduction for contributions to public charities is fifty percent of adjusted gross income, which would be \$40,000 in this ex-(Ceilings of twenty percent and thirty percent are also applicable under certain circumstances, but are not introduced into this illustration.) If the artist contributes \$40,000 of cash to charitable institutions, that amount would be the maximum deduction which could be Suppose the artist also contributed \$40,000 of personal creations. Ignoring the ceiling, this would not be available to other taxpayers, however, and so would be inequitable if it resulted in tax benefits to the artist. This problem could be solved by limiting the total contributions that would lead to tax benefits to fifty percent of adjusted gross income. Rules would specify which donations would be

counted first and would also stipulate the proper handling of any excess amounts.

Summary

The limiting of the deduction to the adjusted basis of the property is too restrictive for donor-created works of art. While there are no problems of administration and no undesirable side effects, there is also no incentive to give. In the case of political papers, on the other hand, a deduction limited to the adjusted basis of the property is quite proper. While such a provision would provide no more of an incentive to politicians than it would to artists, evidence suggests that no incentive is required. The use of adjusted basis therefore is easy to administer, involves no undesirable side effects, and does not provide a tax expenditure for which no benefits are received.

Proposals to establish a subjective standard of one sort or another for ordinary income property donations would not be acceptable because they lack administrative feasibility. Such proposals could cause much litigation and might easily result in more unfavorable publicity than did the law which existed prior to the Tax Reform Act of 1969. While subjective rules are easily enunciated, they often prove to be complex if not impossible to implement.

Possible estate tax incentives are also not desirable. Providing estate tax benefits for lifetime gifts would be neither simple nor certain, since the actual benefits would depend upon the circumstances at the time of the individual's death. There would be so many extraneous variables present that the degree to which any such proposal would provide an incentive would be unpredictable and would vary considerably from person to person.

The allowance of a deduction for the fair market value of the property given would have most of the strengths and weaknesses which it possessed when it was the law, and continues to be unacceptable. While feasible from the standpoint of being technically administerable, it is not an alternative which is likely to be acceptable to the public --particularly in regard to political papers. Furthermore, there would be many undesirable side effects with such a provision. The size of the tax benefit would be dependent upon the tax bracket of the donor. This would result in the donor with the larger income receiving the larger volume of tax dollar savings for the same gift. Likewise, since a deduction would include untaxed value increases, gifts of property would not be equated in benefit with cash donations. Those of property would be preferable. Finally, taxpayers in the fity percent marginal tax bracket would do about equally as well giving or selling. Only in very rare cases, whoever, could-a taxpayer make a profit by giving.

Since the adjusted basis of created property is so small, a discussion for a deduction would apply virtually intact to a credit. It is once again not appropriate for artistic works since it would not produce the necessary incentive. The credit for political papers would be inferior to a deduction only because it would require a relatively meaningless change in the tax law. As long as the general rule for

charitable contributions is to allow a deduction, the addition of useless administrative complexity by changing this specific area would be pointless. A credit for adjusted basis was therefore an acceptable but inferior choice.

Allowing a credit for 30 percent of the fair market value of the donated asset would offer advantages when applied to donor-created works of art. This provision would be acceptable to administer since it would be simple to apply and since valuation did not appear to be a severe problem. The provision also did not have the undesirable side effects which made the pre-1969 law unacceptable to the general public. A tax credit would be equitable in the sense that tax credits are independent of the tax bracket of the donor. This alternative would not allow any taxpayer in a tax bracket possible under the current law to profit from giving rather than selling. Also, a ceiling on the amount would prevent taxpayers from eliminating their entire tax bills by making gifts. One shortcoming was that a credit based on value discriminates against cash donations since part of the property's tax benefits would be derived from untaxed income in the form of appreciation in value. Such a condition would be necessary, however, in order to provide an adequate incentive for giving. The question seemed to come down to one of the proper percentage to apply in determining the credit. The incentive would be particulalry attractive to the government since the tax benefits to the donor would not be influenced by unrelated factors, but instead would be purely a function of the economic benefit which was received by the institution. An additional

positive attribute was that a larger incentive would be provided for assets which had appreciated most in value and thus presumably were greatest in intrinsic value.

CHAPTER 8

SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

The operation of a tax system within a complex society requires that provisions of the law be constantly reviewed to evaluate both the objectives and the results. The evolution of society has dictated such careful attention by posing a continuing threat to the validity of both the assumptions underlying established society goals and the linkage between those goals and the measures used to achieve such purposes. The intricacy of society, and thus by necessity the complexity of the tax structure, has served to reinforce this auditing requirement by obscuring relationships which under simpler conditions would be easily recognized or at least more quickly detected.

This research effort studied the 1969 tax law provision pertaining to charitable contributions of ordinary income property. The primary purpose of this study was to determine the objectives of Congress with regard to donations of ordinary income property and to analyze the degree to which the effects of the Tax Reform Act of 1969 were consistent with Congressional intent. The objectives of the ordinary income property provision were determined by considering it in the context of the legislative history of the Tax Reform Act of 1969 along with the historical development of the charitable contribution deduction. Indications of the effects of the law change were then

determined through questionnaires and private correspondence. With the examination of the objectives and results completed, the study synthesized the findings through analysis of possible alternatives to the 1969 provision.

Summary and Conclusions

The roots of the current charitable contributions provisions were found in the War Revenue Act of 1917. The original justification for the allowance of a charitable deduction in determining taxable income was that it was needed in order to counteract the negative impact of the First World War on charitable donations. The enacting Congress feared that the high wartime income tax would discourage persons of wealth from continuing to support such socially desirable institutions as private colleges. There seemed to be little fear of taxpayer abuse of this provision since donations were assumed to be made out of current income and in the form of money, and there was a limit in the amount of the deduction so that it could not substantially reduce an individual's tax base.

Over the ensuring years, the perspective of Congress remained relatively unchanged. While the war itself had ended and tax rates were reduced, Congress saw fit to continue the tax incentive for donations. The changes in this provision indicated that Congress was satisfied with and wished to expand the tax benefits available under this provision.

The Tax Reform Act of 1969 evolved partially from public dissatisfaction with inequities in the tax system. Public sentiment and Congressional opinion had both risen in opposition to a tax system whose workings made it possible for some high-income taxpayers to substantially or entirely avoid paying federal income tax. Congress made an intensive review of the tax system as it attempted to extract a fair share of the tax burden from all taxpayers. The charitable contribution deduction, particularly as it applied to appreciated property, was one of the areas which a United States Treasury Department report had cited as an often-used device for tax avoidance. As a consequence, it was one of the most modified areas of the tax code.

The many changes which were made in the charitable contributions provisions by the 1969 Tax Reform Act did not represent a change in Congressional intent. Congress maintained the objective of providing a tax incentive for donations to philanthropic organizations with the constraint that it should be done in such a manner that it would not be subject to misuse. The 1969 Act was the manifestation of the dissatisfaction of Congress with the degree to which the law was meeting that objective. The amendment was a Congressional attempt to restructure the charitable contributions provision so that it would be a more effective means of achieving the goal which Congress intended.

The appropriateness of providing government support for charitable organizations is in part due to the value judgments of the people.

Society has apparently made a collective judgment that these institutions serve a desirable purpose in the community.

Works of art are examples of objects which the government should encourage to be placed in such public institutions. These unique works, once placed in private hands, might never be made public. Even if they should be made available at a later point in time, any value which would have accrued to society by having them immediately available would be forever lost. Some items which individuals would be willing to donate to museums in order to receive tax deductions may be of low quality, which would seem to threaten to burden museums with storage and maintenance expenses which are not justified. However, a museum which accepts a work presumably has made a judgment that the cost is overridden by the benefits.

The letters, papers, and memoranda of political figures have value because they offer unique insights into the decision-making processes of public figures and thus allow perspectives which may not be available from other sources. They could be of inestimable value in reconstructing and analyzing the events of history. However, a great amount of material has little value and produces nothing but a storage burden. Also bias can be introduced if the donor edits the materials. The storage problem seems inevitable regardless of the manner of acquisition. Furthermore, only with the passage of time will specific items be able to be properly assessed for their values to historians. The problem of bias was regarded as insignificant on a practical basis by university foundations.

The income tax system appeared to be an appropriate means to use in providing an incentive for charitable giving. The sharing of

responsibility for philnathropic activities between the public and the nonprofit sectors of society appeared to be entirely appropriate. The provision of these semi-public goods could be accomplished by using resources of both sectors—a process which had the advantage of drawing upon the strengths of each sector to most effectively and efficiently provide social services. The alternative of using a matching grant program did not offer advantages which made it superior to the tax system. A system of matching grants also would fail to provide any incentive to individuals to make charitable donations. The use of the tax system could be defended on several additional grounds including its positive effect on taxpayer morale, its proven workability over sixty years, and the relative ease of administering it through an already existing system.

The use of a fair market value deduction such as the one which existed prior to the Tax Reform Act of 1969 might not be the most appropriate means of achieving the objectives of Congress. Since most individual taxpayers use the standard deduction, the incentive would be effective for only a minority of U.S. taxpayers. The facts that high-income taxpayers are more apt to itemize deductions and that a deduction is more beneficial to high-income taxpayers would create problems of vertical equity as well. The 1969 Act mitigated these problems by replacing fair market value with adjusted basis as the amount to use in computing the deduction for donations of ordinary income assets. The amount of the deductions was thereby reduced so radically that any inequity present would be immaterial.

When applied to ordinary income property, a deduction for fair market value had further drawbacks. When combined with the lack of inclusion of the profit in the tax base for the contributor of the property, the result was a double tax benefit to the extent that value exceeded cost. This was an effect which was not available for gifts of cash or services and so presented a situation which was not equitable to persons whose skills did not result in tangible property. In the extreme, the outcome could be a profit to the donor which was not justifiable and could threaten to erode taxpayer confidence. These problems were also eliminated by the 1969 Tax Reform Act. The ordinary income provision removed the double benefit, the inequity with cash or service contributions, and the possibility of profiting from a donation to a philanthropic institution.

The Tax Reform Act of 1969 did not have a material effect upon contributions of the papers, letters, and memoranda of political figures. The evidence presented strongly suggested that nontax factors were dominating forces in determining how a politician would dispose of such materials. The tax benefits which were available under the prior law were not necessary to provide the incentive for these donations and thus resulted in revenue losses to the federal government. The 1969 Act was therefore not inconsistent with Congressional intent in terms of its effects on donations of the professional materials of politicians.

By contrast, the evidence indicated that donations of works of art by the creators were substantially reduced as a result of the 1969

Tax Reform Act. Income tax implications appeared to be important factors in the decision process of artists, with many choosing to either keep or sell their works of art rather than donate them in the absence of any meaningful tax benefits. Such effects were a clear indication that, under the 1969 Tax Reform Act, the intent of Congress to encourage donations was not met for works of art.

Information which was recieved in completing this study suggested that the restricted deductibility of ordinary income property contributions may have materially reduced the charitable giving of literary manuscripts of writers. Responses from university foundations included numerous unsolicited comments which referred to the negative impact of the 1969 Act on such contributions.

Responses to the questionnaire which was sent out in August 1976 suggested that dollar information which would have been useful in the course of this study was not available. Many institutions replied that their recordkeeping was inadequate to permit them to report the information requested regarding the dollar value of contributions received for recent years. Such lack of information in this area was also noted during Congressional testimony.

Recommendations

The findings of this study indicated that the provision of the Tax Reform Act of 1969 which governs the treatment of donations of ordinary income property has caused effects which are not consistent with the general objective of Congress of providing a tax incentive for gifts to philanthropic institutions. This discrepancy appeared to be caused by the concern with tax abuses publicized in 1969.

Professional Materials of Artists

The charitable contribution deduction rules seem too strict as they apply to donor-created works of art. It is recommended that a more appropriate tax treatment for charitable contributions of works of art by the creator would be to allow a tax credit determined by the fair market value of the property. A credit for thirty percent of the fair market value of the donated asset is suggested, as such a proposal has been recommended by several members of Congress and thus seems to be a viable alternative politically. This proposal also seems to satisfactorily meet the intent of Congress relative to charitable contributions.

A provision of this nature is necessary to achieve the Congressional objective of encouraging the donation of such items. This law would also avoid many of the disadvantages which were inherent in the prior law. Vertical equity is protected since the credit would be independent of both the decision of whether or not to itemize deductions and the tax bracket in which the taxpayer is located. Profiting from a charitable gift is prevented as long as the credit percentage plus the highest marginal tax rate does not exceed one hundred percent. Valuation, which was formerly a problem, should be solved as a result of the activities of the Art Advisroy Board. Furthermore, there may be no more problem here than there is in several other areas where fair

market value is still the measure of the deduction. Other disadvantages, such as the inequity of granting tax benefits for appreciation in value which was not subject to taxation as recgonized income, were felt to be necessary and acceptable in order to provide a needed inventive.

Professional Materials of Political Figures

The most appropriate tax treatment for charitable donations of political papers is to continue the present law of restricting the deduction to the cost of the materials. A stronger incentive is not required to induce such donations, and so would represent a needless revenue loss to the government and an unnecessary benefit to the tax-payer. Furthermore, a more liberal deduction may cause serious damage to taxpayer morale—the result being a reduction of the effectiveness of the voluntary compliance system and an increase in the cost of administration.

Professional Materials of Literary Figures

Further research should be conducted to determine the most desirable tax treatment of forms of ordinary income property which were not specifically isolated for discussion. An area which is particularly in need of further study is that of donated works of literary figures. Comments received during this research project indicate that charitable gifts of these items may have diminished substantially

since the enactment of the Tax Reform Act of 1969. An additional study should be undertaken to determine if a stronger incentive should be reinstituted.

Recordkeeping and Reporting by Exempt Organizations

The findings of this study demonstrated that the implications of income tax laws do have a significant influence on some types of charitable contributions. Since tax-exempt organizations are so dramatically influenced by the federal income tax laws, it is recommended that formal consideration be given to the voluntary submission to Congress of an annual statement which summarizes the operations of the philanthropic sector for that year. Such a report would discuss charitable giving during the year and compare it to changes in the general The report would also discuss the uses of assets by philaneconomy. thropic institutions so that Congress could assess, at least in general terms, the benefits which the nation and its citizens derive from this sector of the economy. Philanthropic organizations and types of contributions could each be divided into several major categories so as to emphasize relevant differences. One final part of this report--and possibly the most important -- would be a narrative indicating any current problems or projected future problems and the means by which Congress could assist in their alleviation. In this manner members of Congress could receive a consolidated timely report which would include information which they would find useful and recommendations of action

which they might consider for adoption as being in the best interest of the nation.

In order to provide information to Congress and other interested parties which would be valuable in enabling them to understand the needs of charities, it seems necessary that tax-exempt organizations improve their methods of record keeping. In this manner they can better substantiate general opinions with specific information. While a museum is interested in a collectible item because of the historical significance and cultural worth, it should also be indirectly interested in the dollar value so that information can be presented to such interested outside parties as Congress. Support for statements involving perceived changes in giving pattern must necessarily be presented in terms of a common measuring unit with dollars being the natural choice. Although valuation problems would require the use of estimated figures, they would still represent a vast improvement over no figures at all. Valuation figures for insurance purposes present the same obstacles. Such figures, in fact, might be very helpful and reduce the additional record keeping which would otherwise be required.

In order to most effectively implement the previous two recommendations, philanthropic institutions should organize a national clearing house of information. Such a center could gather information each year through a comprehensive survey, make the results available to members and other interested parties, and report the findings along with analysis to Congress. They may also undertake other research which they are so directed to do by the membership. Such an

information center could be organized as a new and autonomous body or as a part of an existing organization. The function might also be contracted out to a service organization which is qualified to perform such activities.

APPENDIX A:

QUESTIONNAIRES AND OTHER MAILINGS

INSTRUCTIONS: For each of the following statements, please indicate your opinion by placing an "x" in the appropriate box. If you wish to add any additional comments, you are encouraged to do so. Space is provided at the end of the questionnaire.

BACKGROUND NOTE. The Tax Reform Act of 1969 places several limitations on charitable deductions. Among these is the restriction of the deduction to cost when "ordinary income property" is donated. Ordinary income property is property with appreciation which would be taxed at ordinary rates if it were recognized as income. It is primarily created property, and includes works of art still held by the artist and personal papers still held by the creator. It does not include such assets as stocks held for more than six months. The Tax Reform Act of 1969 also placed restrictions in such areas as foundations and the unlimited charitable deduction.

1.	Tax incentives are an appropr	iate way to stimulate	philanthrony.			
••	strongly agree	tend to agree	no opinion	tend to disagree	strongly disagree	
2.	For every dollar of value tha reduction.	t a taxpayer transfer	s to charity, he shou	ld receive no more th	an fifty cents of tax lis	bility
	strongly agree	tend to agree	no opinion	tend to disagre s	strongly disagre e	
3.	The tax benefit which result the gift.	s from a donation to	charity should be re	elated to the benefit	which society receives	from
	strongly agree	tend to agree	opinion	tend to disagre s	strongly disagree	
4.	Charitable gifts of ordinary in	come property are n	ot materially influenc	ed by tax incentives.		
	strongly agree	tend to agree	no opinion	tend to disagree	strongly disagree	
5.	Awareness that the federal go charitable giving.	vernment encourages	donations through ta	ix laws generates a po	sitive public attitude t	oward
	strongly agree	tend to agree	no opinion	tend to disagree	strongly disagree	
6.	Contributions of ordinary inc	ome property should	not be treated differ	ently from contributi	ons of other property.	
	strongly agree	tend to agree	no opinion	tend to disagree	strongly disagree	
7.	The Tax Reform Act of 1969	has caused a general	decline in charitable	contributions.		
	strongly agree	tend to agree	no opinion	tend to disagree	strongly disagre e	
8.	The Tax Reform Act of 1969	has caused a general	decline in donations	of ordinary income pr	operty.	
	strongly agree	tend to agree	opinion	tend to disagree	strongly disagree	
9.	The tax benefits of a donati	ion are seldom men	tioned when we disc			ionor.
	strongly agree	tend to agree	opinion	tend to disagree	strongly disagr ee	
10.	Donors to my institution havincome property donations.	e changed their givin	ng patterns due to the	influence of the limit	ed deductibility of on	dinary
	strongly agree	tend to agree	on opinion	tend to disagree	-strongly disagree	
11.	Donors to my institution have	e changed their giving	patterns due to the r	epeal of the unlimited	d deduction provision.	
	strongly agree	tend to- agree	no opinion	tend to disagree	strongly disagr ee	

12.	Donations of ordinary income property should be treated the same as donations of services, since essentially what has been contributed is the time and the talent of the donor.						
		strongly agree	tend to agree	no opinion	tend to disagree	strongly disagre e	
13.		h of the following best erty?	indicates your attitud	le regarding the curr	ent tax treatment of	donations of ordinary income	
	The current treatment is necessary in order to prevent a continuation of the taxpayer abuse whice existed.						
		The current treatment i	is ill-advised because i	t discourages donati	ons of such property	•	
		The current treatment i	is needed due to the p	otential problem of	taxpayer morale.		
14.		h of the following facto contributions? (More th			mining the amount o	f tax benefit allowed for chari-	
		the level of income of t	he donor				
		the cost to the donor					
		the benefit to society			_		
		the potential abuse due	to valuation problem	s			
		the nature of the donat	ion (cash v. property	v. services)			
15.		your experience, which	n of the following bes	t indicates the effec	t of income tax facto	ers upon donations of ordinary	
	The tax effect of the charitable contribution deduction is largely illusory, so donations would be substantially the same even if it were removed in its entirety.						
	The decision of a donor to make a charitable gift is largely independent of the underlying tax implications, but the decision as to the <u>amount</u> of the gift is affected.						
		The decisions as to whany underlying tax imp		able gifts and as to	the amount of charit	table gifts are both affected by	
16.		ording to your experience ribution decisions?	e, how important is	each of the following	ng factors in exerting	g an influence upon charitable	
Income tax factors							
		very		r	modestly	un-	
	-	important	importar	nt ir	nportant	important	
		L	Ш				
	Estat	te planning					
		very	:		nodestly	un- important	
		important ·	importar	1 t 11	mportant		
	Onnes	ian recognition			-	- .	
	Frest	ige; recognition			modestly	นก•	
		very important	importar		nportant	important	
	Habi	t; continuation of lifelor	ig pattern				
		very		1	modestly	un-	
		important	importa	nt is	nportant	important	
	Moral committment						
		very important	importa		modestly mportant	un- important	
				"			
	Pravi	ious association with org	anization				
	.,	very	uu.t.W.!	ſ	modestly	un-	
		important	importa		nportant	important	

17a. Please indicate the following information about your institution. Show contribution amounts in dollars based upon fair market value. Round off amounts to the nearest thousand dollars. (If it is more reasonable to round off at a different point, please do so and indicate how much rounding you have done.) Reliable estimates may be used if actual figures cannot be obtained.

	Cash Contributions Received (For operations only, do not include capital contributions)	Ordinary Income (Donor-Created Property) Contributions
1974		
1972		
1970		
1968		
1966		

- b. If there were nontax factors which caused a significant change in the pattern of contributions, please indicate what these factors were and what effect you perceive them to have had.
- c. Suppose that the pre-1970 law were still in effect. What, in your opinion, would the above figures have been for the year 1974?

	Cash Contributions Received (For operations only, do not include capital contributions)	Ordinary Income (Donor-Created Property) Contributions
1974		

- 18a. If you were a witness testifying before a Congressional committee, what would you recommend as the best tax treatment of contributions of ordinary income property?
 - b. On what basis (bases) would you defend this recommendation?

19.	As what type of institution would you classify yourself?					
	☐ art museum ☐ government archive ☐ university library ☐ other (please specify)					
20.	Where is this institution located (city and state)?					
21.	In what year was this institution (or charitable division) founded?					
22.	What is the size of this institution (or charitable division), in terms of the current value of the collections?					
23.	What is the size of this institution (or charitable division), in terms of attendance (or other appropriate measure of public usage)?					
24.	What position do you, the person complating this questionnaire, hold with respect to this institution?					
25.	If you wish to make further comments, feel free to do so here or on another sheet of paper.					

Please return this questionnaire in the enclosed, postpaid, self-addressed envelope.

INSTRUCTIONS: For each of the following statements, please indicate your opinion by placing an "x" in the appropriate box. If you wish to add any additional comments, you are encouraged to do so. Space is provided at the end of the questionnaire.

BACKGROUND NOTE. The Tax Reform Act of 1969 places several limitations on charitable deductions. Among these is the restriction of the deduction to cost when "ordinary income property" is donated. Ordinary income property is property with appreciation which would be taxed at ordinary rates if it were recognized as income. It is primarily created property, and includes works of art still held by the artist and personal papers still held by the creator. It does not include such assets as stocks held for more than six months. The Tax Reform Act of 1989 also placed restrictions in such areas as foundations and the unlimited charitable deduction.

1.	Tax incentives are an appropr	iate way to stimulate	philanthropy.			
	strongly	tend to	no	tend to	strongly	
	agre e	agre e	op <u>ini</u> on	disagree	disagree	
2.	For every dollar of value tha reduction.	t a taxpayer transfer	s to charity, he shou	ld receive no more th	an fifty cents of tax lia	bility
	strongly	tend to	no	tend to	strongly	
	agree	agree	opinion	disagre e	disagree	
3.	The tax benefit which result	e from a donation to		ulated to the benefit	which cociety receives	from
J.	the gift.		·			
	strongly	tend to	no	tend to	strongly	
	agree	agree	opinion	disagree	disagree	
		Ļ	Ц	Ц		
4.	Charitable gifts of ordinary in					
	strongly	tend to	no opinion	tend to disagre s	strongly disagr e e	
	agree	agree	opinon	riisedi ce	nisedien.	
	• 📙		L	L)	u	
5.	Awareness that the federal go charitable giving.	vernment encourages	donations through ta	ix laws generates a po	sitive public attitude to	oward
	strongly	tend to	no	tend to	strangly	
	agree	agree	opinion	disagree	disagree	
6.	Contributions of ordinary inc	ome property should	not be treated differ	ently from contributi	ons of other property.	
	strongly	tend to	no	tend to	strongly	
	agree	agree	opinion	disagree	dis <u>ag</u> re e	
					· 🗖	
7.	The Tax Reform Act of 1969					
	strongly	tend to	no	tend to	strongly	
	agree	agree	opinion	disagree	disagree	
		L.J		Ц	Li	
8.	The Tax Reform Act of 1969	•		•		
	strongly	tend to agree	no opinion	tend to disagree	strongly disagree	
	agre s		П	disagico		
	L.	ш	u	니		
9.	The tax benefits of a donation					n.
	strongly	tend to	no	tend to	strongly	
	agr ee	agree	opinion	disagree	disagree	
	u	Ш	Ц			
0.	I have changed my giving patte	ern due to the influe	nce of the limited ded	uctibility of ordinary	income property dona	tions.
	strongly	tend to	no	tend to	strongly	
	agr ee	agree	opinion	disagre e	disagre e	
_						
1.	I have changed my giving patt strongly	ern due to the repea tend to	l of the unlimited ded no	uction provision. tend to	strongly	
	agree	agrae	opinion	disagree	disagree	
	<u>—</u>					
		니				

12. Donations of ordinary income property should be treated the same as donations of services, since essential been contributed is the time and the talent of the donor.			rices, since essentially what has					
		strongly agr ee	tend to agree	no opinion	tend to disagree	strongly disagree		
13.	Which		indicates your attitud	le regarding the cur	rent tax treatment o	f donations of ordinary income		
		The current treatment existed.	is necessary in order	to prevent a conti	nuation of the taxpa	yer abuse which had previously		
		The current treatment i	y.					
		The current treatment is needed due to the potential problem of taxpayer morale.						
14.	Which table	h of the following facto contributions? (More th	rs should be taken in an one answer may b	to account in deter a marked.)	mining the amount	of tax benefit allowed for chari-		
		the level of income of t	he donor					
	$\bar{\Box}$	the cost to the donor						
		the benefit to society						
		the potential abuse due	to valuation problem	19				
		the nature of the donat	ion (cash v. property	v. services)				
15.		your experience, which	of the following bes	t indicates the effe	ct of income tax fac	tors upon donations of ordinary		
				n deduction is larg	ely illusory, so dona	tions would be substantially the		
	The decision of a donor to make a charitable gift is largely independent of the underlying tax implications, but the decision as to the <u>amount</u> of the gift is affected.							
	The decisions as to whether to <u>make</u> charitable gifts and as to the <u>amount</u> of charitable gifts are both affected by any underlying tax implications.							
16.	According to your experience, how important is each of the following factors in exerting an influence upon charitable contribution decisions?							
	Income tax factors							
		very			modestly	un-		
		important	importa	nt	important	important		
•		u			L)			
	Estat	e planning						
		very	•		modestly	un-		
		important	importa	nt I	important	important		
						—		
	Prest	ige; recognition						
		very important	importa	nt	modestly important	un- important		
	Habi	t; continuation of lifelon	g pattern					
		very			modestly	un-		
		important	importa	nt	important	important		
			. 🗆					
	Mora	al committment						
		very	imaana		modestly important	un-		
		important	importa			important		
	Oea.	سا ious association with org						
	PTOVI	_	anication		modestly	un-		
		very important	importa	nt	important	important		
						i d		

17a. Please indicate the following information about your contributions. Show amounts in dollars based upon fair market value. Reliable estimates may be used if actual figures cannot be obtained.

	Total Contributions Made	Ordinary Income (Donor-Created Property) Contributions Made
1974		
1972		
1970		
1968		
1966		

b.	If there were nontax factors which caused a significant change in the pattern of contributions, please indicate what these
	factors were and what effect you perceive them to have had.

c. Suppose that the pre-1970 law were still in effect. What do you believe the above figures would have been for the year 1974?

•	Cash Contributions Received (For operations only, do not include capital contributions)	Ordinary Income (Donor-Created Property) Contributions
1974		

¹⁸a. If you were a witness testifying before a Congressional committee, what would you recommend as the best tax treatment of contributions of ordinary income property?

b. On what basis (bases) would you defend this recommendation?

19.	What is your professional area? □ national politics □ state politics □ art □ other (please specify)
20.	Where is your principal place of residence located (city and state)?
21.	Into what age category do you fall? 25 and under 26 – 35 36 – 50 51 – 65 66 and over
22.	What is your annual adjusted gross income (1971-75)? ☐ \$0 - \$20,000 ☐ \$20,000 - \$35,000 ☐ \$35,000 - \$50,000 ☐ \$50,000 - \$75,000 ☐ \$75,000 - \$100,000 ☐ \$100,000 or more
23.	What is the value of your total wealth (net worth)? \$0 - \$60,000
24	If you wish to make further comments, feel free to do so here or on another sheet of pager.

THANK YOU VERY MUCH FOR YOUR ASSISTANCE!

Please return this questionnaire in the enclosed, postpaid, self-addressed envelope.

INSTRUCTIONS. In a couple of paragraphs, please discuss each of the topics below. Whatever comments and detail you can provide will be greatly appreciated. The questions in parentheses are provided to assist you in organizing your response. They are not intended to limit the scope of your answer.

BACKGROUND NOTE. The Tax Reform Act of 1969 restricts the charitable deduction to cost when personal papers and memoranda created by or for the donor are contributed. It thus limits the deduction for such gifts to relatively small amounts.

 Discuss how the tax change referred to above has affected lifetime gifts of personal papers to your institution by political figures. (To what extent has it affected current donations of such property? To what extent has it affected donor intentions with regard to future donations? Does the effect seem to be a decrease in or just a delay of such donations?)

2. Discuss how worthwhile the personal papers of political figures are as archival material. (Is much of this material of such a nature as to be little more than a storage burden to the recipient institution? Is there a potential problem of bias since the donor selects the materials to be contributed?)

If you wish to make further comments, please use the back of this sheet or another sheet of paper. You are encouraged to do so, as I am most anxious to learn your thoughts in whatever depth you are willing to express them.

THANK YOU VERY MUCH FOR YOUR ASSISTANCE:

Please return this questionnaire in the enclosed, postpaid, pre-addressed envelope

	Name
1.	Do you intend to donate your senatorial papers to a nonprofit institution?
	☐ Yes, during my lifetime ☐ Yes, upon my death ☐ No
2.	If yes, to what institution are they to be donated?
3.	Is the federal income tax a significant factor in your decision as to the disposition of those papers?
	□ Yes □ No

Please Return In The Envelope Provided THANK YOU



University of Hawaii at Manoa

College of Business Administration Department of Accounting and Finance 2404 Maile Way • Honolulu, Hawaii 96822

December 30, 1976

Dear President Ford:

I realize that you are a very busy individual, but I ask that you or an aide please take five minutes to provide me with a small amount of information.

Would you please indicate to me what you intend to do with the papers and memoranda which you have accumulated during your years in public office, and in particular your Presidential papers. Specifically, to whom are they to go and when? Do you intend to place any restrictions on any part of them?

My warmest thank you for your consideration.

Sincerely and aloha,

John M. Strefeler Assistant Professor of Accounting University of Hawaii

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