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One of the primary objectives of this country's tax system is to ensure that every taxpayer pays an equitable share of taxes on gross income. In carrying out that objective, Congress promotes "vertical equity"[1] and "horizontal equity."[2] Also embedded in the tax system is a promotion of various social and economic interests.[3] The IRS and courts have addressed the allowance of deductions, exclusions or credits in furtherance of social policy and economic objectives.[4] There is substantial scholarship addressing the appropriateness of Congress enacting tax legislation in furtherance of social policy.[5] The Taxpayer Relief Act of 1997[6] is consistent with the government's use of legislation to further social objectives.[7]

Many of the tax benefits derived from the allowance of deductions, credits and exclusions go to the middle income and wealthy taxpayers. As we move into the new millennium, the interest rates[8] are favorable resulting in increased real estate activity and the stock market is booming after some turbulence.[9] Recently enacted preferential rates,[10] deductions,[11] credits,[12] and exclusions[13] have lightened investors' tax liability on the economic gains. At the same time, many individuals have not benefitted from the country's overall growth and prosperity. There are many "working poor" who are unable to afford basic services.[14] To compensate for their woeful financial condition, community-based organizations are providing assistance to these individuals in the form of food and services.

One innovative program that is becoming popular to counter weakened communities is the use of self-help community programs that imitate barter exchanges.[15] In today's global economy with resources growing increasingly scarce in lower income areas, many communities are creating non-cash economies by utilizing self-help programs.[16] These programs reward participants with "Time Dollars" or "service credits" for volunteering their services. For example, in a Time

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Dollars program operating in St. Louis, between 1992 and 1995, the number of Time Dollars earned by participants increased from 9552 per year to 45,026. [17] Between January and August 1996, participants in the St. Louis program earned 41,014 Time Dollars.[18] The Time Dollars or service credits entitle participants to receive services, including home repairs, elder care, transportation and childcare. Participants are also entitled to receive property, such as computers.[19] The objective of these programs is to convert a community weakened by poverty and unemployment into a more vibrant community.[20] Because of this objective and the level of success of the Time Dollars program, the program has received attention from the foreign media.[21]

During 1996, Congress made massive changes to the welfare system by enacting "The Personal Responsibility and Work Opportunities Reconciliation Act of 1996."[22] Under the welfare reform legislation, recipients of public assistance are required to satisfy mandatory work requirements. The Time Dollars program and similar self-help community-based programs offer a unique opportunity because they not only serve to invigorate communities lacking economic resources, but they may satisfy the mandatory work requirements of the welfare reform legislation. At least one county has already determined that participation in a Time Dollars program satisfies the mandatory work requirement.[23]

The type of services provided by participants in Time Dollars programs is consistent with some of the welfare reform's mandatory work activities. For example, participants routinely provide childcare services in Time Dollars programs.[24] Under the Federal welfare legislation the provision of childcare service and community service satisfy mandatory work requirements.[25] Significantly, several scholars have opined that the welfare reform legislation does little to solve the plight of the impoverished[26] and require the involvement of community-based programs.[27]

Part I of this article will describe the increasing use of self-help programs in general and Time Dollars program in particular. Part I will also compare self-help programs with barter exchanges. Part II of this article will explore the concept of gross income and the tax issues surrounding barter exchanges. Part III will analyze the tax consequences to participants in self-help community-based Time Dollars programs. In analyzing this issue, the Time Dollars program will be compared to barter exchanges, which result in taxable income to the recipient of the service credits. While the IRS has found the self-help community-based program is not a barter exchange, it has expressly declined to address the issue of whether participants have gross income.[28] Part III will further explore the use of the tax system to promote social programs. This part will propose that these programs should not result in taxable income to the recipient of Time Dollars and explain the reasons why the recipient should receive tax-free treatment and the criteria for receiving tax-free treatment. The most significant policy consideration involves the welfare reform legislation. Finally, Part III will offer some perspectives on future application.

I. THE PROLIFERATION OF SERVICES FOR SERVICES AND PROPERTY

A. Time Dollars and Self-Help Programs

For many people, the 1990s have brought about financial rewards as a result of favorable interest rates and a strong stock market.[29] However, the wealth has not trickled down to many individuals. For many other people, the 1990s have brought about financial hardship. There are people who are gainfully employed but continue to live below the poverty level. In November 1998, the local Milwaukee newspaper profiled a family of nine that struggled financially notwithstanding the fact that both the husband and wife worked at jobs paying $9.00 and $7.00 per hour, respectively.[30] Financially, the couple was unable to afford the monthly $650 rental expense and had to move into a relative's home when the husband's employer cut his work hours.[31] The newspaper article points out that the family receives food from a food pantry but the wife, "like many other pantry users, gives something back by volunteering ten to fifteen hours a week at an affiliated homeless shelter."[32] This is an example of how communities are finding creative means to allocate scarce monetary resources and combat today's global economic society. This technique of reciprocity enables a low-income individual to receive needed goods and services and provide goods and services to help other low-income individuals.

Dr. Edgar S. Cahn[33] formed Time Dollar Institute, a not for profit, tax-exempt corporation, to develop and disseminate the human capital concept as a strategy for rebuilding the non-market economy and strengthening informal support networks.[34] Time Dollars represent a community program whereas a participant can earn Time Dollars for time contributed in eligible activities. To the extent that a person has special skills or talents, that person contributes those talents and receives Time Dollars thereby making a broad range of services for other members available. These services might include hair styling, automobile repair, house cleaning, tutoring, gardening and providing transportation.[35] Time Dollars programs utilize a local, computerized currency that encourages individuals to volunteer services that benefit the elderly, children, the disenfranchised and at-risk or disadvantaged groups. The Time Dollars do not have a designated dollar value. There is the expectancy that participants will perform services, but there is no contractual obligation to perform services.[36] Elderplan,[37] an HMO in New York, gives a twenty-five percent discount on premiums to Time Dollars participants in return for the payment of 100 Time Dollars earned helping other members.[38] To secure the discount, members must have earned a substantial number of credits and must maintain a minimum balance of fifty credits. The discount of twenty-five percent is claimed by transferring 129 hours in Time Dollars to Elderplan. The member-to-member program generates specific cost saving benefits for the sponsoring organization. To the extent that the member-to-member plan saves money for Elderplan, a discount passes on those savings in a way that operates as an incentive to maintain the continued participation.

In conjunction with the Time Dollars program, the Chicago Public School System has implemented a cross-peer tutoring program where high school students earn Time Dollars tutoring upper grade elementary school students who in turn earn Time Dollars as tutors of lower grade elementary school students.[39] Because of the value of parental involvement in the development of children, parents were also required to volunteer along with their children.[40] Upon earning 100 credits, the student tutors were able to purchase refurbished computers with the Time Dollars.[41] One sixth grader who received a computer stated, "I started tutoring because of the computer, but it feels good to know how to do something well enough that you can teach someone else."[42] This is consistent with the Time Dollars program goal of instilling pride in the participants. With the Time Dollars, 2000 students received refurbished computers.[43] Under the Time Dollars Youth Program, Time Dollars were awarded to teenagers who served on juries in actual cases of juveniles charged with non-violent offenses over which an adult presided.[44] Jurors who earn 100 Time Dollars were entitled to purchase computers.[45] The Time Dollars Youth Program was established after a study concluded that more than fifty percent of all African-American males between the ages of eighteen and thirty-six were under some form of criminal justice supervision.[46]

In Washington, DC, residents of a neighborhood entered into a retainer agreement with a law firm wherein they donated one Time Dollar in exchange for one billable hour of legal services benefiting the community.[47] The residents earned the Time Dollars by babysitting, lobbying and performing other neighborhood activities.[48] With the assistance of the law firm, the participants in the program were working to close crack houses and complete a delayed renovation of a playground located in the community.[49] During 1997, the law firm billed $234,979 in legal services benefitting the community.[50] In another Washington, DC program, residents established a Time Dollars food bank generating 78,540 service hours within an eleven-month period.[51] In St. Louis, an organization known as Grace Hill utilized Time Dollars which entitled participants to receive services such as transportation, plumbing and child care, as well as entitled participants to purchase household goods.[52] There were about 3000 people participating in the Grace Hill Neighborhood Services Time Dollars program.[53] The Time Dollars program of Grace Hill Neighborhood Services operated a store where participants could purchase donated clothes, cleaning and personal care products and other items.[54] The participants working in the store received Time Dollars and could purchase goods from the store or a related community program.[55] The mission statement of Grace Hill community program is:

> to provide direct services cost-effectively within the self-help traditions of the Settlement House movement through community organizations;
>
> to work for social change within society to foster greater support and understanding of the disadvantaged; and

> *to work in disadvantaged neighborhoods creating strong, healthy, helping communities by encouraging and supporting neighbors as they help themselves and others.* [56]

The Grace Hill mission statement, specifically the italicized portion, is consistent with the overall objective of all Time Dollars programs. They are intended to provide a vehicle to enhance the value of a community with limited monetary resources by encouraging community involvement.

Many additional Time Dollars programs are in existence throughout the country. Although they may utilize the same operational structure and reward Time Dollars to participants of the program, each program is a separate and distinct organization managed by their own coordinators. Some of these programs may even use terms other than Time Dollars to refer to the service credits. However, there exist standard characteristics in each of these self-help community-based programs. The sponsor of the program is a nonprofit community organization. The nonprofit organization does not charge participants in the program fees such as commissions, annual fees or initiation fees. Each hour of service provided, irrespective of the type of service, entitles the participant to receive one Time Dollar. The program does not designate a dollar value to Time Dollars.

The theory underlying self-help community programs is community reciprocity. Some scholars have opined that real wealth is not based on monetary considerations but rather on human capital.[57] The fundamental premise underlying "human capital is that every individual has needs but is also capable of making meaningful contributions to community programs and society as a whole."[58] The self-help community-based programs are designed to capitalize from this human capital concept. Because of the social capitalization concept, the Time Dollars program receives substantial financial support from foundations. The Robert Wood Johnson Foundation provided a three-year grant of approximately $200,000 in support of the Grace Hill Time Dollars Program[59] and a total of $1.2 million in funding to various Time Dollars programs.[60] One Time Dollars program operating in St. Louis received a grant from the United Way in the amount of $56,000 to defray some of the operating expenses.[61]

The sponsor of the self-help community program does not guarantee that a member will be able to receive services for accumulated points. One concern that participants have addressed is whether they have a guaranteed right to receive property or services upon providing property or services.[62] Various Time Dollar programs have attempted to alleviate these concerns by limiting the number of credits a participant can earn in a week and possibly limiting the number of credits participants may carry forward to the following year.[63] Aside from creating administrative rules, such as the aforementioned limitations or a system of first in line, first in right when resources are scarce, a participant is not given a guarantee that services or property will be available.[64] Similarly, if a participant in the program does not provide any goods or services, the program sponsor does not have any legal redress against that participant. There are many participants, such as individuals suffering from Alzheimer's disease, who receive benefits under the Time Dollars program even though they are unable to contribute any services.[65] Any contractual obligation would stymie the program's ability to help those who need the most assistance from a community-based program. Significantly, one unexpected problem that has developed in the Time Dollars program is getting participants to spend their Time Dollars.[66] Individuals are volunteering more hours than receiving them primarily because of the intangible benefits they derive from giving something back to the community.[67] The organizers are striving to come up with creative ways to encourage participants to spend their Time Dollars.[68]

The type of services being provided in the Time Dollars program are routinely provided by friends and neighbors. For example, under this theory, one neighbor might drive her child to school along with a neighbor's child, and at the end of the school day the other neighbor might pick the children up from school. Along those same lines, neighbors collect the mail for other neighbors who are vacationing. Upon their return, the traveling neighbors bring their neighbors a souvenir and thank them for collecting the mail. This type of community exchange takes place everyday. No one would expect any of these individuals to report taxable income on their returns even though there is informal, unwritten reciprocity inherent in the community exchanges.

Dr. Cahn summarized the Time Dollars program in the following manner:

> Time Dollar networks are different from volunteering and different from barter [exchanges]. Like volunteerism, they confirm participants sense of self-worth. But they also enable people to convert their personal time into purchasing power.
>
> Time Dollars are not barter [exchanges] because they are not used for commercial products; they reward what neighbors and families used to do for each other for free. We have two economies: the market economy and the household economy. The market economy may be in trouble, but the real source of many of our problems is the devastated family economy. We live next door to one another but live as strangers. Time Dollars knit neighbors into community.[69]

B. The Barter Exchange

The concept of bartering or trading services or property for other services or property has existed for generations.[70] Several communities are experimenting with alternative currencies[71] as a way of allocating scarce resources and strengthening local economies in the context of a traditional barter exchange.[72] In most barter exchanges, an organization serves in the capacity of a clearinghouse for the exchange of the goods or services.[73] That organization either provides a member with a referral or a list of providers of goods and services.[74] A card similar to a credit card is used to purchase the goods and services. Thereafter, the organization functioning as a clearinghouse credits the seller's account and charges the purchaser's account. The seller of goods or services receives a service credit, which entitles the seller to purchase goods or services equal to the credits earned. The credits are freely alienable and may be paid to employees as compensation or to shareholders as dividends.[75] However, the barter exchange does not guarantee that a participant will be able to use all the participant's service credits.[76]

Presently, there are approximately 1800 local currencies worldwide created in response to the global economy and the growing scarcity of resources.[77] A program has been created in Maine that refers to the credits as "Waldo Hours."[78] In Ithaca, New York, the service credits are referred to as "Ithaca Hours."[79] Ithaca Hours "were designed to foster trade among local businesses and to keep them from being mowed under by national chains."[80] In Willimantic, Connecticut, "Thread City Bread" was created to "improve the local community and foster community ties."[81] In Buffalo, New York, the Buffalo Hours Exchange was created to enable participants to use "Buffalo Hours to benefit the local economy and help low-income individuals."[82]

These barter exchanges designate a dollar value to the service credits. Under the Waldo Hours barter system, one Waldo Hour is valued at $10.00 and one-half hour is valued at $5.00.[83] Each Ithaca Hour is valued at $10.00.[84] One Syracuse Hour is worth $10.00.[85] Under the Buffalo Hours Exchange, each Buffalo Hour is worth $10.00.[86] A participating service provider determines the amount of Buffalo Hours required for the service.[87] Where there is a traditional barter exchange, the clearinghouse profits by charging members membership fees, such as annual dues, and commissions.[88] On its web page, the "Barter Buddys" bartering network provided the fee schedule for several programs: 1) Membership directory - $25.00 for directory and a line of advertising; 2) Unlisted phone number in directory - $10.00; 3) Barter services - $25.00 deposit and three percent charged to each party upon completion of transaction; 4) Computer picture of item for trade on exchange - $25.00; and 5) Complete barter service package - $50.00.[89]

One of the most significant features of barter exchanges is the participants' motivation for participating in the respective programs. In 1982, Professor Robert I. Keller wrote an extensive article on barter exchanges and defined the participants' motivation in the following manner:

> [T]he major advantage to a taxpayer in joining a barter exchange is simply that of obtaining new business. The electrician joins hoping that club members will call him or her rather than the hundreds of other electricians in the yellow pages. Restaurants join for the same reason. So do retailers or manufacturers with excess inventory or space capacity. On the other hand, doctors or lawyers with all the cash business they can handle would gain little from joining.[90]

Consequently, there are apparent differences between the Time Dollars program and barter exchanges. There is no dollar designation for Time Dollars, but barter exchanges designate dollar values to service credits. The Time Dollars program sponsor does not charge membership fees and commissions while the barter exchanges assess such fees. The Time Dollars program adheres to one Time Dollar for one hour of service concept without regard to the type of services provided whereas a service provider in a barter exchange may have the ability to designate the number of service credits required for the particular service. More importantly, the primary objective underlying the Time Dollars program is the promotion of community service and economic development, self-help and self-worth. Conversely, the primary motivational factor for an individual to participate in a barter exchange is the promotion of economic activity.

II. INCOME INCLUSION PRINCIPLES

A. In General

One unanswered question regarding the self-help community-based program is whether the participants have taxable income upon the receipt of the Time Dollars, services or property. If this question is answered in the affirmative, the participants may be required to file an income tax return and report the income as self-employment income. The issue of whether the fair market value of the Time Dollars is included in income is only relevant if the participant's income is above the designated floor. A taxpayer is subject to tax only when the taxpayer's income exceeds a certain amount. For example, in 1998 a single individual's income had to exceed $6950 before that individual was required to file a tax return.[91] However, if the income is self-employment income, the participant must file a return if the net earnings from participating in the program exceed $400 to pay Federal payroll taxes for social security and Medicare.[92] Another consideration pertains to the application of the earned income credit.[93] Assuming that the participant has taxable self-employment income, the participant may be entitled to the earned income credit on "earned income" because the Internal Revenue Code (hereinafter "IRC" or "Code") defines earned income to include wages, salaries, tips, other employee compensation and self-employment income.[94] For taxable year 1996, the total earned income credit was $28.8 billion.[95] The IRS paid $23.2 billion of that amount directly to taxpayers who although had no tax liability, qualified for a refund due to the refundable nature of the earned income credit.[96]

For taxable year 1996, the last year statistics are available, the tax profile of aggregate taxpayers in the lower income tax bracket for the noted adjusted gross income (AGI) levels is as follows:

Amount of AGI[97]	Numbers of Returns	Total Income Tax
$ 5,000 but not over $ 7,000	5,397,531	$425,565
$ 7,000 but not over $ 9,000	5,469,549	888, 645
$ 9,000 but not over $11,000	5,437,993	1,694,909
$11,000 but not over $13,000	5,202, 093	2,203,176[98]

Amount of AGI	Percentage of Returns Showing No Total Income Tax	Average Tax
$ 5,000 but not over $ 7,000	71.4	$275
$ 7,000 but not over $ 9,000	44.5	292
$ 9,000 but not over $11,000	41.6	534
$11,000 but not over $13,000	42.5	737[99]

For taxpayers with AGI between $5000 and $10,000, the total tax due at the time of filing the return was $819,289,000.[100]

These statistics are relevant for several reasons. First, they show that lower income individuals are paying taxes. Second, the earned income credit must be factored into the equation. In many cases it might be beneficial for a participant to consider the receipt of the Time Dollars as gross income from services rendered. For example, assume that a participant in the self-help program performed housekeeping services on behalf of other participants and received in return Time Dollars valued at $1000 during 1997. Assume also that the housecleaner was single, had no additional income and had two dependents. The participating housecleaner would be entitled to a refund of $229. If that same single mother earned $2000 worth of Time Dollars, she would receive a refund of $467 because of the earned income credit. If that single mother earned $3000 in Time Dollars, she would receive a refund of $686 because of the refundable earned income credit. If the participant earned $5000 in Time Dollars, she would be entitled to a refund in the amount of $1143.

Alternatively, if the twenty-four year old housecleaner had one child and she earned $1000 in Time Dollars, her tax liability would be $70.[101] If the participant earned $2000 in Time Dollars, she would have a tax liability of $140. If she earned $3000 in Time Dollars, she would have a liability of $212. If she earned $5000 worth of Time

Dollars, she would have a tax liability of $366. If the twenty-four year old housecleaner did not have any dependents and she received $1000 worth of Time Dollars, she would not be entitled to an earned income credit and her tax liability would be $141 as a result of self-employment taxes.[102] If the participant had $2000 of gross income as a result of participating in the program, the tax liability would be $283.[103] If that same participant earned $3000 worth of Time Dollars, the tax liability would be $424. If the participant earned $5000 in Time Dollars, she would have a tax liability of $707.

In summary, the tax consequences to the housecleaner are as follows:

	Income			
Number of Dependents	$1,000	$2,000	$3,000	$5,000
0	(141)[104]	(283)	(424)	(707)
1	(70)	(140)	(212)	(366)
2	229	467	686	1,143

At this stage of the Time Dollars program, participants earn less than $2000 in Time Dollars, annually.[105] Based on this statistic, the tax liability would be less than $283. At the outset, this might not seem like an insurmountable tax liability. However, unless the participants could pay the tax liability with Time Dollars, the participant would have difficulty paying the tax because the participant is impoverished. This would be fatal to the program, and the positive benefits to the participants and the community would disappear. In the final analysis, some participants would owe a tax liability while others would not based primarily on the participant's entitlement to the earned income credit. In either case, detailed records of transactions would need to be maintained even though many of the recipients would not have to pay any income taxes.[106]

B. The Meaning of Income

1. In General

In 1913, Congress enacted the Sixteenth Amendment to the Constitution and adopted the current income tax system.[107] Under this tax scheme, the longstanding definition of gross income is "all income from whatever source derived" except items expressly excluded under the Code.[108] The Supreme Court has held that this definition is to be given a liberal construction "in recognition of the intention of Congress to tax all gains except those specifically exempted."[109] It is oftentimes stated that the definition of income encompasses all accessions to wealth.[110] Where a taxpayer realizes an accession to wealth and has complete dominion over this accession, the taxpayer has taxable income.[111] Another important factor to be considered in determining whether an accession to wealth is included in income is the economic benefit to the recipient.[112] In *Charley v. Commissioner*,[113] the taxpayer received frequent flyer miles that he earned during business travel as an employee, but the employer transferred to the taxpayer. The taxpayer was the president of a business that inspected industrial accidents. The business generally billed clients for first class airplane tickets. The taxpayer would then instruct the travel agent to arrange for coach service and use frequent flyer miles to upgrade the ticket to a first class ticket. The travel agent would then transfer funds to the taxpayer's personal travel account in an amount equal to the difference in price between the first class and coach tickets. The court found that the taxpayer had gross income for two alternative reasons. First, the frequent flyer miles were considered additional compensation.[114] Second, the taxpayer had gross income based on the gain derived from the disposition of property.[115] Because the taxpayer's adjusted basis in the frequent flyer miles was zero, he had gain based on the difference between their fair market value and the basis.[116] Significantly, the court expressly declined to rule on the question of whether frequent flyer miles in the abstract constitute gross income.[117]

Although the definition of income is broadly construed, courts have recognized that not all economic gain is included in the taxpayer's gross income. For example, appreciation of an asset represents an accession to wealth. But, courts require a realization event, such as a sale of the asset, prior to the taxation of appreciation.[118] Generally, unsolicited samples are not included in gross income. In *Haverly v. United States*[119] the court addressed the issue of whether a school principal, who claimed the charitable donation deduction for unsolicited books received by the principal and donated to the elementary school library, realized taxable income. The principal was required to include the value of the samples because the failure to tax them would result in double tax benefits.[120] The principal received the books from textbook companies in the hope of receiving favorable consideration for the instructional unit for which the principal was responsible.[121] The court found that this was a taxable accession of wealth because: 1) Receipt of textbooks was an accession of wealth; 2) possession increased the taxpayer's wealth; 3) taxpayer's receipt and possession of the books indicated that the income was clearly realized; and 4) the books were given for whatever disposition he saw fit to make.[122] The court found the accession of wealth taxable because the taxpayer took the charitable contribution deduction for the donation of the unsolicited samples.

2. The Barter Exchange

The tax laws prevent a taxpayer from escaping tax liability by exchanging property or services for other property or services. The Sixteenth Amendment does not require that the direct receipt of cash be the only form of income in the constitutional sense.[123] Consequently, under the Code, a taxpayer cannot avoid taxation by entering into an arrangement where the taxpayer transfers services or goods for other services or goods. Gross income includes the fair market value of property received in payment for goods and services.[124] For example, if a taxpayer owns appreciated property and transfers it to another person for services, the transferor will have taxable income provided that the transfer was not expressly excluded under the Code.[125] Section 1.61-2(d)(1) of the income tax regulations provide that, if services are paid for other than in money, the fair market value[126] of the property or services taken in payment must be included in income as compensation. The cost of the services will be presumed to be the fair market value of the compensation received in the absence of evidence to the contrary.[127] The fair market value of services and property is includable in gross income for the taxable year in which received.[128] Therefore, if an attorney performs legal services for a dentist and instead of receiving money the dentist performs a root canal on the attorney free of charge, both parties have income even though neither party received any cash.[129]

Many barter transactions are implemented through the use of a barter exchange. Section 6045(c)(3) of the Code defines a barter exchange as "any organization of members providing property or services who jointly contract to trade or barter such property or services." The Treasury Regulations clarify the term "barter exchange" by providing that it means any person with members or clients who contract either with each other or the sponsor of the exchange to trade or barter property or services directly or through the sponsor of the exchange.[130] Members of a barter exchange must include in income the value of credit units received for services performed for the taxable year in which the credits are received.[131]

Based on the nature of barter exchange transactions, they invite tax avoidance.[132] In order to forestall tax avoidance, the barter exchange is required to file a return with the IRS providing the names and addresses of participants, gross proceeds and any additional information required under the regulations.[133] The IRS instituted a "Barter Exchange Project Unreported Income Program" in 1979. According to the Department of Treasury, Internal Revenue Manual Supplement, 45G-324, March 11, 1980, the purpose of the project was "to identify and to select returns in need of examination that are associated with organized barter exchanges."[134]

In Professor Keller's 1982 article, he recommended five principles that the courts and IRS should adhere to in determining the tax consequences of the barter transaction:

> Principle I - All economic benefits, regardless of form, are includable in income; the amount of the income is the fair market value of the benefit received.
>
> Principle II - If the value of the benefit received cannot be determined with reasonable accuracy but the value of the benefit given up can be, the value of the former is presumed to equal the value of the latter.

Principle III - The "cost basis" of the property received in a taxable barter exchange is the property's fair market value at the time of receipt.

Principle IV - The term "paid or accrued" or "paid or incurred" includes the fair market value of an in-kind benefit received in a taxable transaction by the taxpayer.

Principle V - Even if the reporting of an item of gross income under Principle I would permit the taxpayer to claim an equal tax deduction under Principle IV, both the income and the deduction items must be reported on the taxpayer's income tax return.[135]

In recognition of the variety of prices between a buyer and seller, Professor Keller noted that the proper mode of valuing property or services received in a barter exchange would be what the recipient would have paid in cash to the actual seller of the goods or services.[136] He also recognized the difficulty of ascribing a value to goods or services received in a barter exchange.[137] Specifically, he cited *Seas Shipping Co. v. Commissioner*,[138] for the proposition that the goods or services exchanged in a barter may not be of equal value.[139] Notwithstanding these difficulties, Professor Keller concluded that in order to ensure parity between barter and cash transactions, the five tax principles need to be applied.

3. IRS's Position Regarding Self-Help Programs

Although the tax consequences of barter exchanges are clear, there is little authority as to whether participants in Time Dollars programs must include the value of the credits in income. The IRS has ruled that an organization is not a barter exchange where there is an exchange of services on an informal, noncommercial basis and there is no contractual right or obligation for the exchange of property or services.[140] Consequently, the sponsor of the informal exchange was not required to file an informational return with the IRS. Under the facts of the ruling, the sponsor, a nonprofit organization, coordinated the Time Dollars program but did not charge a fee for participation. A participant received a service credit for the provision of services (including housekeeping, baby sitting, gardening and errand running) and a recipient received an account debit. In the event that a participant had a debit balance of 26 points or more, the nonprofit community organization had the discretion to deny the participant the ability to receive additional services. The nonprofit organization did not guarantee that a participant would be able to receive desired services with accumulated points.[141] The factors that the Internal Revenue Service considered relevant to its determination that the organization was not a barter exchange were:

1. The services provided were generally domestic or personal services;

2. A participant received credits based on the number of hours of the services provided irrespective of the type of services provided;
3. A contributor of services had no contractual guarantee to receive services or property;
4. The participant was not entitled to receive services within a designated time frame;
5. A participant could only assign accumulated credits to family or household members;
6. The sponsor of the program was a community organization, and the participants resided in the same geographic location;
7. The sponsor did not charge the participants any fees; and
8. There was no consistency between the number of hours of services provided and of those received.[142]

Significantly, the IRS expressly stated that "no opinion [was] expressed concerning whether a member earn[ed] income as a result of the member's participation in the program."[143] That is, the IRS declined to address the issue of whether participants had gross income within the meaning of section 61 of the Code.

The private letter ruling was consistent with an earlier one issued by the IRS. In Private Letter Ruling 8536060, the IRS responded to a request made by a taxpayer, a not-for-profit organization. The not-for-profit organization supervised a community self-help program.[144] The not-for-profit organization maintained a file of participants and their skills and linked them with other participants needing assistance.[145] The participants did not have a contractual obligation to perform and services performed were considered to be voluntary. Volunteers provided skills such as housekeeping, babysitting and house painting. The not-for-profit maintained accounts of the number of credits a participant spent, but according to the ruling, this was done "merely as a means to motivate the volunteers. The continued effectiveness of [the] program depend[ed] on the volunteers perceiving the value of their efforts to the community."[146] In the ruling, the IRS concluded that the not-for-profit organization was not a barter exchange for purposes of section 6045 of the Code and the regulations thereunder. The ruling was based on two fundamental factors. The first factor was that the credits did not have any monetary value. The second factor was that the service providers did not incur a contractual liability upon the receipt of services.[147] Significantly, if a participant received substantial services without performing any services, the not-for-profit could refuse to link service providers with that participant.[148]

III. THE TAXATION OF PARTICIPANTS IN SELF-HELP PROGRAMS

As noted in Part II of this Article, the IRS has not fully addressed the tax consequences surrounding the participation in self-help programs. There is no indication that the IRS has ever attempted to tax the participants in the programs, and there exists several valid reasons why the benefits derived from the self-help programs should continue to be excluded from gross income. First, there is no clear precedent establishing that participants in Time Dollars programs have gross income. Second, there are considerable policy reasons for excluding the Time Dollars from income, and Congress has consistently used the Code to promote social policies and programs. Finally, there are severe administrative constraints to including the Time Dollars in gross income.

A. Income Inclusion Under Existing Principles

The starting point for determining whether a participant has income for the value of the Time Dollars received is whether the transaction is a barter exchange. The law clearly establishes that members of barter exchanges have income upon the receipt of service credits. According to the IRS, a Time Dollars program is not a barter exchange. However, that position does not establish whether participants have gross income. As already noted in this article, gross income includes "all income from whatever source derived" except items expressly excluded under the Code. [149] Hence, the issue really turns on whether the self-help program falls under the "except only" language of the Code or whether the Code needs or should be amended in order to create such an exception. Under the current tax structure, participants in Time Dollars programs have an accession to wealth within the meaning of the landmark Supreme Court decision defining gross income.[150] However, there is no genuine consensus as to whether the receipt of the Time Dollars are taxed as compensation for services rendered[151] or whether the benefits received fall under any current exclusions.[152] One issue is whether the receipt of goods and services in a Time Dollars program is a gift, expressly excluded under the Code.[153] A gift has been defined as a transfer made with "detached and disinterested generosity."[154] The intention of the donor must be determined to establish whether the transfer was made "out of affection, respect, admiration, charity or like impulses."[155] Under this Supreme Court standard, it is unlikely that the receipt would be considered a gift. Although there are significant charitable and self-help purposes inherent in Time Dollars programs, the receipt of service credits, property and services is the result of a participant's contribution of services or property.

It could also be argued that the Time Dollars are excluded under the imputed income concept.[156] Under the imputed income exclusion, one does not have gross income when that individual performs services on behalf of himself or herself. Imputed income is defined as "a flow of satisfactions from durable goods owned and used by the taxpayer, or from goods and services arising out of the personal exertions of the taxpayer on his own behalf."[157] The IRS has never attempted to tax a taxpayer's imputed income even though there is no express exclusion stated in the Code.[158] The IRS has also never attempted to tax a taxpayer for the rental value of property owned by the taxpayer and used by the taxpayer's immediate family and for personal exertions of the taxpayer on behalf of the taxpayer's immediate family.[159] Presumably, imputed income is not taxed because of the administrative problems of enforcement and the substantial burden it would place on taxpayers to place value on their own services and rental value of property.

Similarly, the IRS also does not attempt to tax the fair market value of services performed as a volunteer. If this were the case, the volunteer fire fighter, soccer coach, civic leader and homeless meal program cook all would have taxable income. Any attempt to tax the fair market value of any services volunteered would discourage people from volunteering their services and severely limit the pool of available volunteers.[160] The only benefit that volunteers receive would be the pride and honor of helping others. The rationale underlying the IRS's position to exclude the fair market value of services performed on behalf of that individual and others in the capacity as a volunteer might support an extension that would shield from taxation benefits derived under self-help programs. The imputed income exclusion has never expressly been applied to exclude property or services received in a self-help community-based program such as Time Dollars. However, because a Time Dollars volunteer can expect to receive tangible benefits in the form of services or property upon providing services or property to other participants the rationale supporting the imputed income exclusion does not apply.

B. The Tax System's Promotion of Social and Economic Objectives

1. Congress's Promotion of Social Policy

Congress has used the Code to promote various social programs[161] and to impact the economy.[162] Almost thirty years ago, Professor Stanley Surrey wrote an article addressing whether social policy should be furthered through tax incentives[163] or direct government expenditures.[164] The tax incentives were in the form of deductions, exemptions, preferential rates, credits and exclusions.[165] Conversely, the term "direct expenditures" was defined to include grants, loans and interest subsidies.[166] Professor Surrey argued that direct expenditures were the appropriate device for implementing social policies. Professor Surrey's criticism of the use of tax incentives was based on the following rationale:

> [The committees responsible for writing the tax laws] would normally not consider the substantive areas involved in tax incentive programs. Tax incentives suddenly charge them with acting on substantive matters outside their fields of responsibility simply because the program uses the tax system. Although tax committees are highly competent in tax matters, they do not have as much insight into these programs as the legislative committees normally handling the programs. * * * To cast solutions to social problems as tax measures and exchange expertise in those problems for unfamiliarity is, to say the least, both disruptive and unproductive.[167]

Tax scholars continue to explore Congress's use of tax legislation to influence social policy. Scholarship in this area includes analyses of whether tax policy should be used to provide incentives for taxpayers to build and renovate low-income rental housing,[168] strengthen women's labor market participation,[169] promote savings,[170] control corporate takeovers,[171] affect health policy,[172] promote horizontal equity for same-sex and married couples[173] and promote racial equality.[174] Tax scholars also debate such issues as whether a tax incentive should be one-time or periodic subsidies.[175] Scholars have also opined that the use of tax incentives violates the principle of vertical equity.[176]

Although there lacks an agreement as to whether the tax incentive approach is appropriate, Congress continues to enact tax legislation intended to impact social policy with increasing regularity.[177] For example, prior to the enactment of the Small Business Job Protection Act of 1996,[178] there were no specific tax benefits that encouraged adoption.[179] Today, taxpayers are entitled to a nonrefundable credit[180] up to $5000 for "qualified adoption expenses"[181] including necessary adoption fees, court costs, attorney fees and other expenses directly related to the adoption of a child.[182] Taxpayers are also entitled to exclude a maximum of $5000 from gross income for expenses paid by the employer.[183] The credit and exclusion are phased out ratably for modified adjusted gross income between $75,000 and $115,000.[184] The Joint Committee on Taxation's explanation for the change in law was:

> Congress believed that the financial costs of the adoption process should not be a barrier to adoption. In addition, the Congress wished to encourage further the adoption of special needs children . . ..
>
> The Congress believed that encouraging adoptions in an efficient manner requires a continuous effort to improve the delivery of Federal subsidies. For this reason, the Congress believed that a Treasury Department study is necessary to determine whether the adoption credit and exclusion are an efficient Federal subsidy.[185]

The Code also contains an incentive encouraging the development of low-income housing. Under section 42, an owner of a residential low-income housing project may claim a tax credit annually for a period of ten years.[186] Congress enacted section 42 to provide an incentive to "increase the stock of affordable housing available to low-income individuals."[187] As originally enacted, the low-income housing credit was intended to be temporary; however, the Revenue Reconciliation Act of 1993 permanently extended the credit.[188] According to the legislative history, Congress permanently extended the credit because "a permanent extension [would] provide greater planning certainty needed for furthering the objective of increasing available affordable housing."[189]

The Taxpayer Relief Act of 1997 contained several incentives encouraging saving for a college education, paying tuition and repaying student loans. Congress enacted the

Hope Scholarship Credit[190] and Lifetime Learning Credit[191] "[t]o assist low- and middle-income families and students in paying the costs of post-secondary education."[192] The Hope Scholarship Credit permits taxpayers to claim a nonrefundable credit up to $1500 for tuition and certain additional expenses paid for the first two years of college for the taxpayers, their spouses or dependents.[193] The Lifetime Learning Credit allows taxpayers to claim a twenty percent credit up to $5000 for qualified tuition and related expenses paid by a taxpayer during the year.[194] Congress enacted IRC § 72(t), which permits taxpayers to withdraw money from individual retirement arrangements (IRAs) for tuition and related fees without incurring the standard ten percent penalty. According to the Joint Committee on Taxation, that section was enacted because "Congress believed that it [was] appropriate and important to allow individuals to make withdrawals without incurring the ten percent penalty for educational expenses."[195] The 1997 Act also included a provision allowing a deduction of student loan interest up to the maximum amount of $2500 for interest paid during the first sixty months in which interest is required.[196]

Congress created the new Roth IRA which allows taxpayers to make non-deductible contributions to IRAs and exclude the gain on distributions.[197] Generally, in order to qualify for the tax favored treatment, the taxpayer must receive the distribution after reaching the age of 59 1/2 and holding the IRA for at least five years.[198] The legislative history provides that "[t]he Congress was concerned about the national savings rate, and believed that individuals should be encouraged to save."[199] Additional IRA rules exempt from penalty IRA distributions used to purchase a home by a first-time home purchaser.[200] The legislative history indicated that Congress enacted the provision because many taxpayers had difficulty saving enough to ensure that they will be able to purchase a home and "[h]ome ownership [was] a fundamental part of the American dream."[201]

One of the most significant changes under the Taxpayer Relief Act of 1997 was the reduction of the capital gain rates. Under the Act, the maximum rate on the sale of long-term capital assets is twenty percent.[202] The Joint Committee on Taxation's General Explanation provided the following explanation of the new capital gain rules:

> The Congress believed it is important that tax policy be conducive to economic growth. Economic growth cannot occur without saving, investment, and the willingness of individuals to take risks. The greater the pool of savings, the greater the monies available for business investment. It is through increases in productivity that workers earn higher real wages. Hence, greater saving is necessary for all Americans to benefit through a higher standard of living.
>
> The Congress believed that, by reducing the effective tax rates on capital gains, American households would respond by increasing saving. The Congress believed it is important to encourage risk taking and believed a reduction in the taxation of capital gains will have that effect. The Congress also believed that

a reduction in the taxation of capital gains will improve the efficiency of the capital markets, because the taxation of capital gains upon realization encourages investors who have accrued past gains to keep their monies "locked in" to such investment even when better investment opportunities present themselves. A reduction in the taxation of capital gains should reduce this "lock in" effect.[203]

Under the new section 121,[204] if a taxpayer sells or exchanges a principal residence, the taxpayer is entitled to exclude up to $250,000 from income.[205] The justification for the change was as follows:

Calculating capital gain from the sale of a principal residence was among the most complex tasks faced by a typical taxpayer... [Even though most taxpayers did not have to pay a capital gain tax on the sale] detailed records of transactions and expenditures on home improvements had to be kept, in most cases, for many decades. To claim the exclusion, many taxpayers had to determine the basis of each home they owned, and appropriately adjust the basis of their current home to reflect any untaxed gains from previous housing transactions. This determination could involve augmenting the original cost basis of each home by expenditures on improvements. In addition to the record-keeping burden this created, taxpayers faced the difficult task of drawing a distinction between improvements that add to the basis, and repairs that do not....

To have postponed the entire capital gain from the sale of a principal residence under prior law, the purchase price of a new home must have been greater than the sales price of the old home. The provision of prior law encouraged some taxpayers to purchase larger and more expensive houses than they otherwise would in order to avoid a tax liability, particularly those who move from areas where housing costs are high to lower-cost areas. This promoted an inefficient use of taxpayer's financial resources.[206]

Most of the aforementioned social objectives benefit the middle- and upper-tax bracket taxpayers. Concededly, even though the low-income housing credit benefits the low-income individual by increasing the availability of affordable housing, the actual tax benefit goes to the developer of the project in the form of a favorable credit. There are, however, tax incentives under the Code that directly benefit the lower income taxpayer. The Earned Income Tax Credit[207] is the most significant provision in the Code that is designed to promote a social objective. The credit has been in the Code for many years but has been subjected to many amendments. The legislative history of the 1975 version of the earned income credit, the year of its enactment, provided the following explanation:

> [The Senate Finance Committee] believes that the refundable credit is needed to provide relief to families who currently pay little or no income tax. These people have been hurt the most by rising food and energy costs. Also, in almost all cases they are subject to the social security payroll tax on their earnings. The refundable credit is expected to be effective in stimulating the economy because the low-income people are expected to spend a large fraction of their increased disposable incomes.[208]

The House Ways and Means Committee stated further that one of the primary functions was to encourage people to obtain employment, reduce the unemployment rate and reduce welfare rolls.[209]

The term "earned income" means wages, salaries, tips, any other employee compensation, and any self-employment income.[210] For taxable year 1997, the maximum earned income credits for taxpayers without qualifying children or with one qualifying child or more than one qualifying child were $332, $2210 and $3656, respectively.[211] Generally, the credit is disallowed for individuals with income exceeding $2200 derived from interest, dividends, net rent income, net royalty income, capital gain net income and net income from passive activities.[212] This disallowance was enacted in 1995 to prevent an individual with substantial unearned income from claiming the refundable credit that Congress intended to benefit lower income individuals.

Administratively, the IRS has exercised its discretion and excluded from gross income certain accessions to wealth in promotion of social programs. Under the facts of Revenue Ruling 73-87,[213] low-income families received payments under an experimental antipoverty program funded by the Office of Economic Opportunity.[214] Under the program, the participants also received reimbursements for Federal income taxes paid.[215] In determining that the payments were excludible from gross income, the IRS stated, "[i]n the instant case the payments are in the nature of general welfare payments and are intended to aid poor families without destroying their incentive to improve their living standard."[216] In Revenue Ruling 63-136,[217] the IRS concluded that payments made to individuals under the Area Redevelopment Act or the Manpower Development and Training Act of 1962 were not included in their gross income. In reaching its conclusion that the payments were not income, the IRS stated that the payments were "intended to aid the recipients in their efforts to acquire new skills that will enable them to obtain better employment opportunities and as such, fall in the same category as other unemployment relief payments made for the promotion of the general welfare."[218]

2. Policy Reasons for Excluding Time Dollars Benefits from Income

a. Community Service and Welfare Reform Legislation

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996[219] (PRWORA) which required recipients of public assistance to secure employment in order to continue receiving benefits. Participation in the self-help Time Dollars system may satisfy the mandatory work requirement,[220] although a careful analysis of the individual state's requirement is necessary.[221] The welfare reform legislation effectively ended the Aid to Families with Dependent Children (AFDC) program and created Temporary Assistance to Needy Families (TANF) programs.[222] PRWORA shifts control of TANF to the states by providing them with block grants and the opportunity to design their own welfare reform programs. For example, PRWORA implemented a Federal maximum time limit of sixty months in which recipients are able to receive benefits, but the states could impose shorter time limits. The Act requires adults in families receiving assistance for two years to be engaged in work activities[223] in order to continue receiving benefits.[224] Under these welfare reform provisions, states were given significant flexibility to design programs intended to move residents from the welfare rolls to the workforce. The states were authorized to set more restrictive guidelines than those imposed by PRWORA. Consequently, the states could impose participation requirements shorter than the two year ceiling invoked under the Federal law. The Act mandates one parent to work twenty hours each week in thirty percent of all single-parent and two-parent families receiving aid.[225] In addition, eighty percent of all two-parent households must have one parent working thirty-five hours each week. The mandatory work activities include:

1. Employment, subsidized, unsubsidized in the private or public sector;
2. On-the-job training;
3. Job search and job readiness assistance;
4. Community service;[226]
5. Vocational training;
6. Job skills training that is related to employment;
7. Education that is directly related to employment;
8. Child care services to an individual who is participating in a community service program.[227]

The welfare initiatives implemented by the states vary considerably, including differences in the maximum period a recipient is able to receive benefits,[228] the type of community service that satisfies the work requirements[229] and exemptions from the mandatory work requirement.[230] In areas where unemployment is high and job opportunities limited, many recipients engage in community service jobs to satisfy the work requirements. In certain counties in Ohio, recipients "paint, pick up litter, clean school buildings and playgrounds[,] . . .work in classrooms as teacher's assistants" and drive other recipients to job interviews and medical appointments.[231] Welfare recipients who are unable to locate traditional jobs may be required to engage in community service such as raking leaves or sweeping streets.[232] Wisconsin recently enacted Wisconsin Works[233] (W2) as a welfare reform initiative. W2 imposes one of the toughest welfare reform initiatives in the country.[234] Wisconsin requires employment or community service as a condition of assistance.[235]

One criticism of the welfare reform legislation is that the states must invest a substantial amount of money to prepare their citizens for permanent job placement adequately.[236] However, with community-based programs like the Time Dollars program, states would be able to sustain consistent work participation because the services require minimal training. The education requirements and job training necessary to perform tasks like baby-sitting, making meals for the elderly and car-pooling are minimal while the demand for these work activities are high in impoverished communities. Those individuals remaining on welfare have many barriers including limited work history, illiteracy and substance abuse.[237] It might be more appropriate for those individuals to become involved in the self-help community programs rather than to secure employment. As a result, it is likely the states would have an easier time maintaining the federally mandated work participation rates in a self-help program like Time Dollars. At least one county has already determined that participation in the Time Dollars program satisfies welfare reform's mandatory work requirement. The Fresno County Economic Development Office has determined that participation in the Time Dollars program satisfies the mandatory work requirement imposed by the State of California.[238] State officials in several other states are seriously considering counting a TANF recipient's participation in the Time Dollars program to satisfy the mandatory work requirement.[239]

Stanley W. Carlson-Thies, a Senior Fellow at the Center for Public Justice in Washington, D.C., believes that:

> Families and communities in distress need revised public policies in education, the economic sector, housing, and more and also public programs that supply missing resources. They need, equally, the social networks, personal involvement, and moral challenge, guidance, and support that can be brought by community and especially faith-based organizations. Often the best human services are the ones that combine the material assistance with the personal and moral support.[240]

Other scholars believe that the welfare reform initiatives require the involvement of community-based programs to lessen the economic and social burdens of former welfare recipients.[241]

Many former welfare recipients and the working poor face childcare issues and have financial difficulty in finding adequate childcare.[242] The type of work performed by participants in the Time Dollars program, such as childcare services, provide this type of help and could enable participants to satisfy the mandatory work requirement imposed under welfare reform initiatives. In addition, the childcare provider should be able to satisfy her own mandatory work requirements by providing childcare services to a participant in a community service program.[243]

b. Combating Poverty

The Federal government has attempted to combat poverty in several ways. As already mentioned, the Federal government provides a direct benefit in the form of the TANF benefits provided the recipient meets the mandatory work requirements. One of the shortcomings of welfare reform is that it serves as a disincentive for public assistance recipients to obtain an education. A recent survey conducted by the Educational Testing Services concluded that welfare reform only succeeded in transforming the impoverished welfare recipients into impoverished employees because their skills are not sufficient to enable them to command higher wages.[244] The survey focused on the welfare mother and found that two-third of them had skills sufficient only for the lowest paying jobs.[245] It is unlikely that former public assistance recipients will be able to obtain positions that would move them from poverty because welfare reform emphasized employment rather than education or training.[246] The Time Dollars program fills a void by providing much needed services, goods, and food because many former welfare recipients will continue to live below the poverty level. A recent study conducted by the Urban Institute concluded that one-third of former welfare recipients have either skipped meals or reduced the servings after welfare because of financial constraints.[247]

Most of the former recipients will be entitled to claim the earned income credit because the former welfare recipients are likely to secure low paying jobs. The earned income credit is an efficient social program that provides a Federal subsidy and encourages lower income individuals to obtain employment.[248] Many of these problems are directly related to the welfare reform legislation and the failure to remove former public assistance recipients from below the poverty level. Financial burdens are greatly reduced when a former welfare recipient receives a direct government benefit in the form of TANF benefits, and an indirect government benefit in the form of the earned income credit and the tax-free receipt of goods and services received by participating in a community-based program such as Time Dollars.

c. Promotion of Community Cohesiveness

Participation in a Time Dollars program combats community deterioration and promotes a sense of self worth to disadvantaged groups. Self-help community-based programs inherently increase interaction between participants. In a study published in *Science Magazine*, researchers concluded that there was a correlation between the cohesiveness of a community and the level of neighborhood violence.[249] The researchers looked at similar neighborhoods and found a significant difference in the level of violence and collective efficacy. In 1995, researchers surveyed 8782 residents of 343 neighborhoods in Chicago, Illinois. The researchers' basic premise was that "the differential ability of neighborhoods to realize the common values of residents and maintain effective social controls is a major source of neighborhood variation in violence."[250] Based on an analysis of several factors, the researchers concluded that their collective efficacy was negatively related to violence.[251] Informal community networks are also being explored in an attempt to help prevent child abuse and neglect.[252] Although the basic premise of the Time Dollars program is to alleviate the high unemployment rate in many communities and strengthen these communities by taking advantage of community reciprocity, a secondary benefit is the strengthening of community cohesion and, hopefully, the reduction of criminal and other deviant behavior.

d. Administrative Burden

One principal administrative problem in taxing the receipt of the Time Dollars is the difficulty of valuing the Time Dollars. Under the Time Dollars program, a participant receives one Time Dollar for every hour of service. Assume that one participant installed a ceiling fan and another participant provided services by babysitting. Both tasks took one hour to complete. Should the value of the services rendered be considered equal? If both parties had employed independent contractors to complete the tasks, the installation of the ceiling fan probably would have cost considerably higher than the babysitting services. Administratively, it is not possible to value the Time Dollars based on what the services would have cost. Our scheme of taxation imposes a tax on the amount of cash received and fair market value of property received rather than the value of property or services transferred. The only time the fair market value of the transferred item is used to determine the fair market value of the item received is when the fair market value of the property received cannot be valued.[253]

In addition, if the receipt of credits, services or property were required to be included in gross income, the provider of the services would be entitled to a deduction.[254] It would be difficult to establish the amount of the allowable deduction, because of the nature of the services provided. Moreover the nonprofit sponsor of the program would face considerable administrative burdens drastically increasing administrative expenses. Presently, the funding of the Time Dollars program is provided through foundations, and the overhead expenses are relatively modest. More stringent record keeping would be required resulting in higher administrative costs.

Some of the policy reasons for excluding the value of the Time Dollars from income are consistent with policy justifications of other exclusions. For example, Congress eliminated the taxable gain on the sale of a taxpayer's principal residence on the basis of the purported record keeping difficulty facing the taxpayer.[255] The change was also made to prevent the inefficient use of a taxpayer's resources by encouraging him or her to purchase a more expensive home to avoid tax liability.[256] That legislative history establishes that an administrative burden is an acceptable justification for excluding clear accessions to wealth from gross income. Another factor that Congress found significant in deciding to exclude the gain was the probability that most taxpayers would not have to pay taxes on the gain from the sale of a home even though they had to maintain detailed records.[257] As discussed in Part II, many participants in the Time Dollars program would not have any tax liability, and it is unlikely that any liability would exceed $283.

e. Perspectives on Future Application

The ultimate question raised in this article is whether the government should support participation in the self-help programs through tax subsidies. The subsidy would exclude benefits received from participation in the Time Dollars program and similar self-help community-based programs. It would also exclude benefits derived from the more informal arrangement such as individuals who unilaterally decide to serve as volunteers after receiving goods to maximize self-worth rather than to simply receive a free handout.[258]

The adjusted basis for purposes of determining gain on a subsequent transfer of property or Time Dollars received under the self-help program is zero. This conclusion is supported by *Charley v. Commissioner*.[259] The participant has a zero adjusted basis because the participant did not pay valuable consideration for any property or Time Dollars received. To the extent that a participant conveys the goods received in a taxable transaction, gain must be reported in the amount of the fair market value of property received.[260] This is distinguishable from property received in barter exchanges where the adjusted basis would be the fair market value at the time of receipt.[261] Moreover, if the participant transferred the property or Time Dollars in a nontaxable transaction, the recipient's adjusted basis would be zero.[262]

An additional question is whether a participant who received tax-free services and tax-free TANF benefits has a double tax benefit similar to the one received by the taxpayers in *Haverly v. United States*.[263] This issue arises where a participant satisfied the mandatory work requirement of welfare reform by participating in community service under the Time Dollars program. Would double tax benefits be derived because the participant received a tax-free accession to wealth from the Time Dollars and a tax-free receipt of TANF benefits from the same transaction? This question should be answered in the negative. Although double tax benefits are generally disfavored under the Code, the Supreme Court has held that "where the benefit claimed by the taxpayer is fairly within the statutory language and the construction sought is in harmony with the statute as an organic whole, the benefits will not be withheld from the taxpayer though they represent an unexpected windfall."[264] Moreover, the double tax benefit pertains to its potential under separate Code sections.[265] A different answer would be obtained where a participant contributed property to a charitable organization and attempted to claim a charitable contribution deduction under section 170. The participant would not be entitled to receive a charitable deduction under the same double tax benefits concept discussed by the court in *Haverly*.

Finally, this article concludes that the Time Dollars should be excluded from income even though there is an accession to wealth as a result of the reciprocal benefits derived. There are many other transactions in existence where the IRS has not assessed tax liability even though there is a quid pro quo arrangement. For example, taxpayers earn benefits for using credit cards to make purchases, senior citizens are afforded discounts and long-distance telephone companies have offered substantial frequent flyer miles for using their long distance telephone services. The IRS in a new program allows taxpayers to satisfy their tax liabilities by using credit cards. Taxpayers with liabilities as high as $9 million have requested to use their charge cards to take advantage of reward programs.[266] Wealthy taxpayers are interested in paying their taxes with credit cards because:

> Even after paying a fee as high as 2.5% to charge taxes ($25,000 per 1 million), in some cases the rewards can pay off: For example, a $4 million charge could rack up enough points to buy 40 friends first-class round-trip airline tickets to London. The tickets' value: about $400,000.[267]

A full analysis of these programs awaits a future article, but for now it is important to note that the IRS has not attempted to tax these benefits as well. However, it would be difficult to justify from a tax policy standpoint the IRS pursuing the participants in the self-help programs where the revenue derived would be nominal while allowing the substantial accessions to wealth received in other programs to go untaxed.

IV. CONCLUSION

A participant in self-help community-based programs may choose to participate in the program to satisfy the work requirements of welfare reform, attempt to improve the quality of life in the community, or desire to perform charitable services for others without an intention of redeeming the Time Dollars. Presently, there are no express exclusions in the Code that might be applicable to the Time Dollars program. However, the IRS should continue to exercise its discretion and not tax participants in the self-help program in the same manner that it has declined to tax imputed income. In addition, Congress has consistently enacted tax legislation to promote administrative, social or economic policies. Consequently, if the IRS ever attempts to assess a deficiency against participants in self-help programs, Congress should create an express exclusion.

There are numerous advantages for the government to subsidize the Time Dollars program and similar self-help community-based programs by excluding the receipt of the credits from gross income. The programs are designed to instill pride in a community destroyed by limited monetary resources and poverty. They are social programs intended to benefit the impoverished. The self-help program could remove a financial hurdle states face in establishing a community program that satisfies the work requirement. Moreover, one barrier former welfare recipients might have in conforming to the mandated work requirements are childcare and transportation concerns. Participants in self-help programs quite frequently provide transportation and childcare services in exchange for the Time Dollars. Because the Time Dollars program is a social program, there is a public good dimension. The Time Dollars program and similar self-help programs are designed to build a sense of community and trust. Therefore, any gain received by the participants should be tax-free.

Notes

1. Vertical equity means that higher income individuals should pay a higher share of taxes based on an ability to pay concept. For a discussion of vertical equity see Paul R. McDaniel and James R. Repetti, *Horizontal and Vertical Equity: The Musgrave/Kaplow Exchange,* 1 FLA. TAX L. REV. 607 (1993); Julie K. Underwood, *School Finance Adequacy as Vertical Equity,* 23 U. MICH. J.L. REFORM. 493 (1995).
2. Horizontal equity means that similarly situated individuals should be taxed similarly. For a discussion on horizontal equity see Louis Kaplow, *A Note on Horizontal Equity,* 1 FLA. TAX L. REV. 191 (1992); Christopher T. Nixon, *Should Congress Revise the Tax Code to Extend the Same Tax Benefits to Same-Sex Couples?: An Analysis in Light of Horizontal Equity,* 23 S. ILL. U. L. J. 41 (1998); Richard Schmalbeck, *Income Averaging After Twenty Years: A Failed Experiment in Horizontal Equity,* 1984 DUKE L. J 509 (1998).
3. *See infra* footnotes 161 and 162.
4. *See, e.g.,* Green v. Connally, 330 F. Supp. 1150 (D.C. 1971) (holding racially private schools are not entitled to Federal tax exempt status and contributors are not entitled to deduction); Rev. Rul. 73-87, 1973-1 C.B. 39 (amounts received by individuals under program designed to combat poverty are excluded from gross income); Rev. Rul. 63-136 1963-2 C.B. 19 (benefits received by taxpayers undergoing training under the Area Redevelopment Act and the Manpower Development and Training Act of 1962 are not included in gross income); and Rev. Rul. 57-102, 1957-1 C.B. 26 (payments made to a blind person were in the interest of the general welfare and excluded from gross income).
5. *See, e.g.,* Gramlich, *Savings, Investment, and the Tax Reform Act of 1986,* National Tax Association-Tax Institute of America, 79th Annual Conference 13-19 (1986) (questioning whether it is appropriate to promote savings through the tax system). *See also infra* notes 163-176 and the accompanying text.
6. *See* Taxpayer Relief Act of 1997, Pub. L. No. 105-34,105th Congress (August 5, 1997).
7. *See infra* footnotes 190-206 and accompanying text.
8. However, during 1999, the Federal Reserve increased interest rates three times to slow the economy. *Fed Raises Rates by One-Quarter Point,* WALL ST. J., Nov. 17, 1999, at A2.
9. During the third quarter of 1998, home values increased by 5 percent in light of low unemployment and low interest rates. *See Home Values Increase 5% Amid Low Mortgage Rates,* WALL ST. J., Dec. 8, 1998, at A4. The housing market was booming because Baby Boomers sold homes and purchased more expensive ones and first time buyers were able to capitalize from low mortgage rates and various programs. *Id.*
10. *See, e.g.,* IRC § 1(h) (1999).
11. *See, e.g.,* IRC § 221(1999).
12. *See, e.g.,* IRC §§ 23 and 25A (1999).
13. *See, e.g.,* IRC § 1(h) (1999).

14. *See, e.g., infra* notes 30-32 and accompanying text.
15. Section 6045 defines "barter exchange" as any organization of members providing property or services who jointly contract to trade or barter such property or services. Bartering exchanges are increasing in popularity. There are approximately 600 barter exchanges compared to 410 in 1986 operating in the United Statues. Lynn Ermann, *URBAN TACTICS; Will Trade Acupuncture for Manicure and Pasta,* N.Y. TIMES, Oct. 31, 1999 at section 14, p. 3. Annually $1.4 billion worth of property and services are traded, and barters are growing 10 percent each year. Barbara B. Buchholz, *Taking a Trade Route; For Many Small Businesses Bartering is a Good Deal,* CHI. TRIB., June 21, 199, at C1.
16. In addition, many community development organizations are being established to combat the negative effects of poverty and community deterioration by providing financial assistance. The IRS has issued several rulings and has consistently found that the organizations qualify for tax exempt status under section 501(c). *See, e.g.,* Pri. Ltr. Rul. 97-18-036 (May 2, 1997); Rev. Rul. 74-587, 1974-2 C.B. 162; Pri. Ltr. Rul. 83-21-148 (Feb. 28, 1983). The organizations qualified for tax exempt status because they promote "social welfare by activities designed to lessen neighborhood tensions, combat community deterioration, or promote the relief of the poor and distressed or of the underprivileged. Treas. Reg. § 1.501(c)(3)-1(d)(2).

    In Private Letter Ruling 84-29-051, the section 501(c) organization provided a below market interest rate loan to a limited partnership to support the construction and development of a marketplace to be located in depressed area. The IRS concluded that any interest income derived on the loans was not considered unrelated taxable income under section 511. *Accord* Pri. Ltr. Rul. 97-18-036 (May 2, 1997).
17. Peter T. Kilborn, *Promising Trade-Off for the Needy,* N.Y. TIMES, Sept. 29, 1996, at A16.
18. *See id.*
19. Sheryl Kennedy, *Students, Parents Plug into Tutoring Program; and it Really Pays Off for Them with Better Grades and Computer,* CHI. TRIB., July 23, 1997, at N3.
20. *See* William Raspberry, *Time Dollars: A Concept for Caring,* THE WASHINGTON POST, Jan. 19, 1996, at A27; E. CAHN, PH.D & J. ROWE, TIME DOLLARS: THE NEW CURRENCY THAT ENABLES AMERICANS TO TURN THEIR HIDDEN RESOURCE-TIME-INTO PERSONAL SECURITY & COMMUNITY RENEWAL 8-9 (1992) [hereinafter CAHN & ROWE].
21. *See, e.g.,* Diane Coyle, *Thursday Book: Can you Imagine Yourself Rich?; FUNNY MONEY: IN SEARCH OF ALTERNATIVE CASH BY DAVID BOYLE,* THE INDEP. (LONDON), Jan. 21, 1999, at 5 (calling the creator of the Time Dollars program "the American forefather of hundreds of Lets schemes now in operation in the UK); *Get Rid of Greed Factor,* S. CHINA MORNING POST, Dec. 27, 1998, at 9 (Time Dollars "compensate for the market-driven economy's neglect of universal human values such as trust and reciprocity.")
22. *See* The Personal Responsibility and Work Opportunities Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996). This article does not critically analyze the welfare reform legislation but only discusses it peripherally as it relates to self-help community based programs.
23. *See infra* note 239 and accompanying text.
24. *See infra* text accompanying note 57.
25. *See infra* text accompanying notes 226-28.
26. For an analysis of the welfare reform legislation and its effects on poverty, see generally Clifford M. Johnson, *Preparing People for Work: State Options and their Fiscal Implications,* 4 GEO. J. ON FIGHTING POVERTY 171, 173 (1996) (there is no assurance that jobs will be created for those unable to find employment); Joel F. Handler, *Women, Families, Work, and Poverty: A Cloudy Future,* 6 UCLA WOMEN'S L.J. 375, 378 (1996) (addressing the obstacles and limitations women

face in obtaining jobs and stating that the government "should stop focusing on the largely symbolic issues of welfare reform and start talking about the politics of redistribution). *See also* Nichola L. Marshall, *The Welfare Reform Act of 1996: Political Compromise or Panacea for Welfare Dependency?*, 4 GEO. J. ON FIGHTING POVERTY 333 (1997) (discusses problems with the work requirement on the state welfare to work programs including lack of job training, poor job retention and limited job opportunities); M. Scanlan, *The End of Welfare and Constitutional Protections for the Poor: A case Study of the Wisconsin Works Program and Due Process Rights*, 13 BERKELEY WOMEN'S L.J. 153, 160 (1998); Alex Rodriguez, *Tightening welfare: Recipients required to work 5 more hours*, CHICAGO SUN-TIMES, Sept. 29, 1998, at 8 (citing Jenny Wittner, director of the Chicago Commons Employment Training Center) (welfare reform emphasis work rather than education resulting in people being "confined to working in poverty forever).

27. Stanley W. Carlson-Thies, *Don't Look to Us: The Negative Responses of the Churches to Welfare Reform*, 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 667 (1997); Joe Sullivan, *Putting all the pieces together: How the church responds to welfare reform*, U.S. CATHOLIC, Vol. 63, No. 7 July 1, 1998, at 30 ("the challenge [for churches] will be to provide temporary assistance to the poor and work to remove barriers in the economy that keep people trapped in poverty"). *But see* Lynn Smith, *The Greatest Distance . . . is Often the One Between Neighboring Communities. Despite Setbacks, Organizers Keep Looking for Ways to Strengthen Bonds*, L.A. TIMES, Nov. 14, 1997 at E1 ("churches' jobs are 'not to compensate for the failure of government to do its job,' and cannot 'underwrite the poor, abused and marginalized in society'") (quoting the Rev. Albert Pennybacker, Director of the Washington, D.C., Office of the National Council of the Churches of Christ).
28. *See infra* notes 140-143and accompanying text.
29. *See supra*, note 9.
30. Margo Huston, *POOR IN NECESSITIES RICH IN FAMILIES Couple's two jobs aren't enough to stave off hunger*, MILWAUKEE J. SENTINEL, Nov. 25, 1998, at 1.
31. *See id.*
32. *See id.*
33. Dr. Cahn is a Professor of Law at the University of the District of Columbia School of Law and the President of Time Dollars Institute, Inc.
34. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133, 2138-2140 (1994).
35. Peter T. Kilborn, *Promising Trade-Off for the Needy*, N.Y. TIMES, Sept. 29, 1996, at A16.
36. *See id.*
37. Elderplan is a "social HMO" which provides social services as well as medical services.
38. Edgar S. Cahn, *When Time is Money*, N.Y. TIMES, Jan. 9, 1993; Edgar S. Cahn, *Thinking Outside the Box: Redefining Work to Redefine Welfare*, (visited Sept. 27, 1998) <http://www.timedollar.org/welfarefinal.htm>.
39. Sheryl Kennedy, *Students, Parents Plug into Tutoring Program; and it Really Pays Off for Them with Better Grades and Computer*, CHI. TRIB., July 23, 1997, at N3.
40. *See id.*
41. *See id.*
42. *Id.*
43. Telephone interview with Edgar S. Cahn, President of Time Dollars Institute, Inc.
44. Courtland Milloy, *Reprimands That Resonate,* THE WASH. POST, March 17, 1999, at B1.
45. *See id.*
46. *See id.*

47. Linda Wheeler, *Activists, Law Firm Join Forces; Alliance Helps to Fight Drugs, Lobby for Playground in Shaw,* THE WASH. POST, April 4, 1996, at J1.
48. *See id.*
49. Edgar S. Cahn, *Rebuilding Community: The Co-Production Imperative,* (visited Sept. 27, 1998) <http://www.timedollar.org/essay.htm>.
50. *See id.*
51. *See id.*
52. Theresa Tighe, *As Welfare Changes, Barter Program Catches Interest*, ST. LOUIS POST-DISPATCHER, Jan. 30, 1997, at 1A.
53. Peter T. Kilborn, *Promising Trade-Off for the Needy,* N.Y. TIMES, Sept. 29, 1996 at A16.
54. 1995 Annual Report, Grace Hill, at 6.
55. *See id.*
56. *Id.* (Italics added).
57. *See* Korten, *Money versus Wealth,* YES! A J. OF POSITIVE FUTURES, Spring 1997. Dr. Korten stated: "In a healthy economy, money is not the dominant value, nor is it the sole or even dominant medium of exchange. Indeed, one of the most important indicators of economic health is the presence of an active economy of affection and reciprocity in which people do a great many useful things for one another with no expectation of financial gain. *Id.* at 15. *See also* E. Cahn & J. Rowe, *Time Dollars*, at 35 (stating "[m]oney is necessary for many things, but it is not adequate for all things, especially the helping and caring exchanges that society needs many more of and that money has tended to displace); Rowe, *Money with Care Built In,* YES! A J. OF POSITIVE FUTURES, Spring 1997, at 23 ("Conventional money knows no loyalty to locality or even country, so it tends towards a global economy in which traditional social bonds give way to a rootless quest for the highest monetary return).
58. *See* Rowe, *Money with Care Built In,* YES! A J. OF POSITIVE FUTURES, Spring 1997, at 24.
59. *See* CAHN & ROWE, *supra* note 20, at 156.
60. *See id* at 96.
61. Theresa Tighe, *As Welfare Changes, Barter Programs Catches Interest*, ST. LOUIS POST-DISPATCH, Jan. 30, 1997, at 1A.
62. Edgar S. Cahn, *Frequently Asked Questions,* (visited Sept. 27, 1998) <http://www.timedollar.org/faq.htm>
63. *See id.*
64. U.S. currency is issued and guaranteed by the Federal government. The objectives of the government's monetary policy are "to maintain long-run growth... of the production, so as to promote effectively the goals of maximum employment, stable prices, and moderate long-term rates." *See* Lewis D. Solomon, *Local Currency: A Legal and Policy Analysis,* 5 KAN. J.L. & PUB. POL'Y 59, 65 (1996) (citing 12 U.S.C. § 225a (1988)).
65. Telephone interview with Edgar S. Cahn, President of Time Dollars Institute, Inc. (Dec. 14, 1998).
66. *See id.*
67. *See id. See also* the accompanying text to footnotes 32 and 47.
68. *See id.*
69. Edgar S. Cahn, *When Money Is Time,* N.Y. TIMES, Jan. 9, 1993 at A23.
70. Keller, *infra* note 74, at 480.
71. Alternative currencies first came in vogue during the Depression. In an article published in the New York Times during 1993, it was reported that:

   . . .In the Depression, when banks were failing and government payrolls faltered because of lack of revenue, communities all over the United States discovered the practicality of going beyond the official legal tender.

Governments, unions, churches and civil groups issued currency certificates that are now collectors' items. Some communities even experimented with new designs: Seattle issued money made of cardboard, and its neighbor Tenino, Wash., produced quarters, half-dollars and dollars of Sitka spruce. *See An Alternative to Cash, Beyond Banks or Barter*, N.Y. TIMES, May 31, 1993 at A28.

72. Professor Lewis D. Solomon of George Washington University Law School wrote an extensive article on the merits of local currency. *See* Lewis D. Solomon, *Local Currency: A Legal and Policy Analysis*, 5 KAN. J.L. & PUB. POL'Y 59 (1996). In the article, Professor Solomon traces the history of the country's currency and banking systems. The primary premise of the article was that local currency creates "decentralization of economic and political power." Solomon, *supra,* at 66.
73. *See* United States v. Gottlieb, 712 F.2d 1363, 1364 (11th Cir. 1983).
74. Robert I. Keller, *The Taxation of Barter Transactions*, 67 MINN. L. REV. 441, 483 (1982).
75. *See id.* at 482.
76. *See id.*
77. Telephone Interview with Dr. Edgar S. Cahn, Director of Time Dollars, Inc. (Dec. 14, 1998).
78. *See* Jeff Shula, *Barter isn't just trading for wood - it's big business*, ME. TIMES, May 29, 1997, available in 199 WL 8886393.
79. David Boyle, *Making Money,* YES! A J. OF POSITIVE FUTURES, Spring 1997 at 28. During 1997, the creator of Ithaca Hours estimated that there were 5700 Hours in circulation generating transactions valued at $1.5. *Id.* at 29. HOURS are currently in use or are planned in other cities including, Boulder, Colorado, Kansas City, Missouri, Atlanta, Georgia, Santa Fe, New Mexico and Portland, Oregon. Lewis D. Solomon, *Local Currency: A Legal and Policy Analysis*, 5 KAN. J.L. & POL'Y 59, 75 (1996) (citing Margaret Stafford, *Alternative Currency Use is Gaining in Popularity*, BOSTON GLOBE, Jan. 17, 1994, at 3).
80. Dave Caldwell, *Preserving a Sense of Place; Ithaca, N.Y., and other Towns Try to Preserve Uniqueness by Limiting Retail Chains*, DALLAS MORNING NEWS, Oct. 4, 1998, at 1J.
81. Carolyn Battista, *Cash It Is, With a Local Cachet*, N.Y. TIMES, July 26, 1998, at14 CN1.
82. Dave Dahl, *Buffalo Hours Expands Use of Alternative Currency*, BUFFALO NEWS, Aug. 25, 1997, at 5B. [Hereinafter *Buffalo Hours*]. An IRS public affairs officer has stated that individuals who earn income in Buffalo Hours must include the value of the Hours in gross income. *See id.*
83. *See* Jeff Shula, *Barter isn't just trading for wood - it's big business*, ME. TIMES, May 29, 1997, available in 1999 WL 8886393. The value of the Waldo Hours is based on the average hourly wage in the county.
84. Solomon, *supra* note 70, at 77.
85. Gary Gerew, *Barter System Put to Work in Syracuse*, SYRACUSE HERALD-J., Feb. 22, 1995.
86. *See* Dahl, *supra* note 82.
87. *See id.*
88. *Gottlieb*, 712 F.2d 1363, 1364; *Accord* United States v. Thompson, 701 F.2d 1175 (1983) ($50 initiation fee and $300 annual dues); United States v. Barter Systems, Inc., 694 F.2d 163 (1982) (initiation fee, annual dues and 10 percent commission payable by members); United States v. Pittsburgh Trade Exchange Inc., 644 F.2d 302 (1981) (members charged 10 percent commission on value of each transaction); Baker v. Comm'r, 88 TC 1282 (1987)(membership fee of $25 and $125 annual fee); United States v. Maxwell, 81-1 U.S. Tax Cas. (CCH) P9378 (1981) (one-time membership fee of $100, annual dues of $150 and 10 percent commission on each transaction payable in trade dollars); Wright v. Comm'r, T.C. Memo. 1992-60 (members required to

contribute $150 upon joining the exchange and charged 10 percent commission on each purchase).

89. Barter Buddys, *Benefits of Barter*, (visited Sept. 28, 1998) <http://www.the-www.com/barter-buddys/benefits.htm>
90. Keller, *supra* note 74 at 486.
91. 1999 U.S. Master Tax Guide (CCH) § 109 (82nd ed.1998). The minimum income levels for all taxpayers is as follows:

Single Individuals	$ 6,950
Single Individuals, 65 or older	8,000
Married Individuals filing separate Returns	2,700
Married Couples Filing Joint Return	12,500
Married Couples with one Spouse Age 65 or Older Filing Joint Return	13,350
Married Couples with Both Spouses Age 65 or Older Filing Joint Return	14,200
Head of Household	8,950
Head of Household Age 65 or Older	10,000
Qualifying Widow(er)	9,800
Qualifying Widow(er) Age 65 or Older	10,650

92. *See* I.R.C. § 1402 (1999). The self-employment tax consists of a 12.4 percent social security tax and a 2.9 percent tax for Medicare. *Id.*
93. *See infra* notes 209 and the accompanying text.
94. *See infra* note 208.
95. Statistics of Income Bulletin, at 13 (Vol. 18, No. 2 Fall 1998)[hereinafter Statistics of Income].
96. *See id.*
97. Data for taxpayers who earn less than $5000 is not included because many of the returns are filed by dependent taxpayers. *See* Statistics of Income, *supra* note 95 at 3.
98. *Id.* at 250-251.
99. *Id.*
100. *Id.* at 36.
101. The participant would receive an earned income credit of $71, but has a liability due because of self-employment taxes in the amount of $141.
102. Because the participant was younger than age 25 and she did not have any dependents, she would be ineligible to receive the earned income credit. *See* IRC § 32(c)(ii)(II) (1999).
103. Although the taxable income is zero, the tax liability is based wholly on Federal payroll taxes for social security and Medicare.
104. Parentheticals indicate that there is a tax liability due.
105. Telephone interview with Dr. Edgar Cahn, August 2, 1999.
106. This was one of the justifications Congress expressed in amending the sale of a principal residence provisions. *See infra* note 206 and accompanying text.

107. The Sixteenth Amendment provides: "The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."
108. I.R.C. § 61(a) (1999). *See, e.g.,* Brabson v. United States, 859 F. Supp. 1360 (1994) (holding mandatory state prejudgment interest awarded in personal action was an accession to wealth but expressly excluded under section 104 of the Code).
109. Comm'r v. Glenshaw Glass Co., 348 U.S. 426, 429-30; Taggi v. United States., 35 F.3d 93 (2d Cir. 1994).
110. *See, e.g.,* Comm'r v. Glenshaw Glass Co., 348 U.S. 426 (1955); Comm'r v. Kowalski, 434 U.S. 77 (1977) (holding cash meal allowance payments provided by employer included in gross income of employee); United States v. Garber, 589 F.2d 843 (5th Cir. 1979) (holding taxpayer required to include in gross income payments received from the sale of her blood plasma).
111. *See, e.g.,* Comm'r v. Glenshaw Glass Co., 348 U.S. 426 (1955); Comm'r v. Lester, 366 U.S. 299 (1961) (holding unlawful gains are also included in gross income where the taxpayer has derived Arealizable economic value). Moore v. United States, 412 F.2d 974 (5th Cir. 1969). *But cf.* Patterson v. Thomas, 289 F.2d 108 (5th Cir. 1961) (holding even though taxpayer had no control over payments made to him or on his behalf he had gross income).
112. *See* United States v. Rochelle, 384 F.2d 748 (5th Cir. 1967).
113. 91 F.3d 72 (1996).
114. *See Charley*, 91 F.3d at 74.
115. *See id.*
116. The court determined that the basis in the frequent flyer miles was zero because the miles did not cost the taxpayer anything. *See* I.R.C. § 1012 (1999).
117. *Charley*, 91 F.3d at 74.
118. *See, e.g.,* Eisner v. Macomber, 252 U.S. 189 (1920) (stock dividend did not constitute a realizing event); Helvering v. Horst, 311 U.S. 112 (1940) (realization event required prior to taxation); Moore v. United States, 412 F.2d 974 (5th Cir. 1969) (an economic gain is includable in gross income when its recipient has such control over it that, as a practical matter, he derives readily realizable value from it).
119. 513 F.2d 224 (1975).
120. *Id.* at 225.
121. *Id.* at 226.
122. *Id.*
123. Crane v. Comm'r, 331 U.S. 1 (1947).
124. Treas. Reg. § 1.61-2(d). *See, e.g.,* Joslin v. United States, 666 F.2d 1306, 1307 (10th Cir. 1981).
125. *See, e.g.,* Int'l Freighting Corp., Inc. v. Comm'r, 135 F. 2d 310 (2d Cir. 1943) (employer had income for appreciated stock transferred to employees as compensation for services rendered); Kenan v. Comm'r, 114 F.2d 217 (2d Cir. 1940) (trustees had income on the transfer of appreciated securities to satisfy obligation).
126. Fair market value is defined as the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy to or to sell and both having reasonable knowledge of relevant facts. Treas. Reg. § 20.2031-1(b).
127. *See* Int'l Freighting Corp., Inc. v. Comm'r, 135 F.2d 310 (2d Cir. 1943).
128. *See* Barter Systems, Inc. v. Comm'r, TC Memo. 1990-125.
129. *See* Rev. Rul. 79-24, 1979-1 C.B. 60. It is irrelevant whether the parties labeled the payment as compensation. A fundamental principle under the Code is that the substance of a transaction takes precedence over the form of the transaction. *See, e.g.,* Frank Lyon Co. v. United States, 435 U.S. 561, 573 (1978); Gregory v. Helvering, 293 U.S. 465 (1935); Groetzinger v. Comm'r, 87 T.C.

533 (1986).
130. Treas. Reg. § 1.6045-1(a)(4) (1999).
131. *See* Rev. Rul. 80-52, 1980-1 C.B. 100 (1980). *See also* Barter Systems, Inc. v. Comm'r, TC Memo. 1990-125 (the fair market value of services received by members is may be included as compensation income for the taxable year in which received).
132. *See* Baker v. Comm'r, 88 TC 1282 (1987). There are many cases that refer to the IRS's use of 3rd party summons against barter exchange organizations to identify taxpayers who fail to report income arising from barter exchanges. *See, e.g.*, United States v. Gottlieb, 712 F.2d 1363 (1983); United States v. Barter Systems, Inc., 694 F.2d 163 (1982); United States v. Brigham Young University, 679 F.2d 1345 (1982); United States v. Pittsburgh Trade Exchange Inc., 644 F.2d 302 (1981); United States v. First Bank, 737 F.2d 269 (1984); United States v. Tiffany Fine Arts, Inc., 718 F.2d 7 (1983).
133. *See* IRC § 6045(a) (1999). The Code provides that a person doing business as a broker is required to provide the information. For purposes of section 6045 a broker includes a barter exchange. IRC § 6045(c)(1)(B) (1999). The regulations provide the following transactional reporting requirements:

> As to each exchange with respect to which a barter exchange is required to make a return of information under this section, the barter exchange, except as provided in paragraph (p)(2), shall show on Form 1099 the name, address, and taxpayer identification number of each member or client providing property or services in the exchange, the property or services provided, the amount received by the member or client for such property or services, the date on which the exchange occurred, and such other information as may be required by Form 1099, in the form, manner, and number of copies required by Form 1099.

Treas. Reg. § 1.6045-1(f)(2)(ii) (1999).
134. United States v. Thompson, 701 F.2d 1175, 1176 (1983).
135. Keller, *supra* note 74, at 445.
136. *See id.* at 450-51. Professor Keller's hypothetical cash purchase price has been criticized for overstating the actual value of the goods or services. *See* Newman, *Determining Value in Barter Transactions: A Response to Robert Keller's The Taxation of Barter Transactions*, 68 MINN. L. REV. 711 (1984).
137. Keller, *supra* note 74, at 455.
138. 371 F. 2d 528, 529-30 (2d Cir.), *cert. denied*, 387 U.S. 943 (1967).
139. *See* Keller, *supra* note 74, at 455.
140. *See* Pri. Ltr. Rul. 96-08-009 (Nov. 9, 1995).
141. See *id.*
142. *Id.*
143. *Id.*
144. *See* Pri. Ltr. Rul. 85-36-060 (June 12, 1985).
145. *See id.*
146. *Id.*
147. *See id.*
148. *See id.* The ruling did note that, however, the not-for-profit organization continued to provide assistance under other programs that it administered.
149. *See supra* note 108 and accompanying text.
150. *See supra* notes 109-110 and accompanying text.

151. Professor Deborah Geier believes that the service credits are included in income because they are compensation for services rendered. *See* Deborah A. Geier, *When Helping Hands Have to Pay Taxes*, NY TIMES Jan. 22, 1993, at A24. Specifically, Professor Geier stated that [c]ontrary to Professor Cahn's assertion that Time Dollars are immune to taxation, Time Dollars received for services rendered are compensation, an accession to wealth maybe excluded from gross income only under a specific provision of the Internal Revenue Code. *Id.*
152. Washington Tax Attorney Kurt Lawson believes that "[t]he tax treatment of service credits could fall under several exemptions that exist under current law." Kurt Lawson, *To Your Credit Summer 1993*, (visited Sept. 28, 1998) <http://www.inform.umd.edu/EdRes/Colleges/HLHP/AGING/SCB/ToYourCredit/Tax Issues.htm>.
153. *See* I.R.C. § 102 (1999).
154. Comm'r v. Duberstein, 363 U.S. 278 (1960).
155. *Id.* (citing Robertson v. United States, 343 U.S. 711, 714 (1952)).
156. The Code does not contain an express exclusion for imputed income, but administratively the IRS has never attempted to tax imputed income.
157. Marsh, *The Taxation of Imputed Income*, 58 POL. SCI. Q. 514 (1943). *See, e.g.,* Helvering v. Independent Life Ins. Co., 292 U.S. 371 (1934) (holding taxpayer did not have gross income for the rental value of building owned and occupied by taxpayer).
158. Professor Victor Thuronyi argues that fairness dictates that an individual should not be taxed on time spent reading a book, helping a child with homework, going to church, or acting as a volunteer. Thuronyi, *The Concept of Income*, 46 TAX L. REV. 45, 82 (Fall, 1990) (citing Chancellor, *Imputed Income and the Ideal Income Tax*, 67 OR. L. REV. 561 (1988)). Professor Thuronyi, however, believes that where an individual provides services or property in that person's profession, such as an attorney who prepares a legal document for herself or a member of her household, fairness might dictate income recognition.
159. In Morris v. Comm'r, 9 B.T.A. 1273, 1278 (1928)(acq.) the Board of Tax Appeals, in addressing whether the value of farmer's own crops was excluded from gross income, stated:

> If products of a farm consumed thereon are income to the producer, it would seem to follow that the rental value of the farmer's home, the gratuitous services of his wife and children, and the value of the power derived from draft animals owned by the farmer and used without cost should also be considered. It is obvious that such items are comparable to the rental value of a private residence, which has never been regarded as income or as a factor in the determination of tax liability.

160. Even if the IRS successfully argued that services rendered by a taxpayer and rental value of property owned by a taxpayer are not covered under the imputed income exclusion, the gift exclusion of section 102 should prevent any imposition of taxes.
161. The Code also contains provisions that discourage the seemingly socially desirable institution of marriage. Married couples are taxed at higher rates than an unmarried couple. Many scholars have addressed the so-called "marriage tax penalty." *See, e.g.,* EDWARD MCCAFFEY, TAXING WOMEN, The University of Chicago Press (1997); John Brozovsky & A.J. Cataldo II, *A Historical Analysis of the Marriage Tax Penalty*, 21 ACCT. HISTORIANS J. 163 (1994); Douglas Chapman, *Marriage Neutrality: An Old Idea Comes of Age*, 87 W.VA. L. REV. 335 (1985); Richard L. Elbert, *Love, God, and Country: Religious Freedom and the Marriage Penalty Tax*, 5 SETON HALL CONST. L.J. 1171 (Summer 1995).

    In actuality, during 1996, 42 percent of married couples incurred greater tax liability (marriage penalty) than their single counterparts while 52 percent of married couples paid less tax (marriage bonus) than their unmarried counterparts. CONGRESS OF THE U.S. CONG. BUDGET OFF., A CBO STUDY, FOR BETTER OR FOR WORSE: MARRIAGE AND THE FEDERAL INCOME TAX xiv (June 1997) [hereinafter cited as A CBO STUDY]. The remaining 6 percent of married couples received neither penalties nor bonuses. *See id.* The CBO study defined marriage penalties and bonuses as:

> Marriage penalties and bonuses in the federal individual income tax are defined as the increase or decrease in taxes that some married couples incur because they pay taxes as couples rather than as individuals. Penalties and bonuses result from the tax code's pursuit of three conflicting goals: equal treatment of married couples, marriage neutrality, and progressive taxation.

See supra A CBO STUDY, at 2.

According to the CBO study, during 1996 marriage penalties totaled approximately $29 billion while marriage bonuses totaled $33 billion. *See supra* A CBO STUDY, at 1. Assuming Congress desires to promote marriage through tax policy, the marriage penalties must be repealed while retaining the marriage bonuses. However, as with other tax subsidies, Congress must give consideration to the impact on revenue.

Significantly, during 1998, Congress considered repealing the marriage penalty. The Wall Street Journal reported that the congressional debate on the matter was based on political reasons, such as re-election considerations. WALL ST. J., July 30, 1998, at B10, col. 2. In the end, the provision was withdrawn for procedural reasons. *See id.* Rep. Bill Archer, chairman of the House Ways and Means Committee, introduced another proposal repealing the marriage tax penalty in the Taxpayer Relief Act of 1998. *See* H.R. 4579, 105th Cong., § 101 (1998). When Congress passed the 1998 Budget, most tax provisions, including elimination of the marriage tax penalty, were not enacted. In Congress's $792 billion tax cut package of 1999, there is a proposal to ease the so-called marriage penalty. For a discussion of the tax bill, see WALL ST. J., July 30, 1999, at A20.

162. POSIN, FEDERAL INCOME TAXATION OF INDIVIDUALS: WITH DIAGRAMS FOR EASY UNDERSTANDING OF THE LEADING CASES AND CONCEPTS, 39 (4th Ed. 1998). The treatise points out that the Code is the product of several forces. First, special interests attempt to alleviate the affect of the progressive tax structure. Second, the "reformers" attempt to close loopholes created by the special interests. Third, the "planners" try to use the Code to promote social behavior. Finally, the Code "is used as an instrument of national economic policy, with rate changes, rebates, credits, deductions, and surtaxes all designed to affect the country's rates of growth, inflation and unemployment." Posin, *supra,* at 39-40.

163. Professor Surrey defined tax incentives as:

> the direct purpose of [special provisions in the Code] is to provide monetary assistance or benefit through the tax laws so as to make the desired course of action financially more palatable to taxpayers involved, and thereby induce them to take that action. Whatever the purpose of the economic benefit involved--be it to make an expensive activity less costly, to reduce its risk, or to increase the rate of after-tax profit--the incentive effect is the desired effect.

Surrey, *Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures,* 83 HARV. L. REV. 705 (1970) [hereinafter Surrey].

164. *See id.*
165. *See id.* at 706.
166. *See id.* at 705.
167. *See id.* at 728.
168. Tracy A. Kaye, *Sheltering Social Policy in the Tax Code: The Low-Income Housing Credit*, 38 VILL. L. REV. 871 (1993) [hereinafter Kaye].
169. Anne L. Alstott, *Tax Policy & Feminism*, 96 COLUM. L. REV. 2001 (Dec. 1996) (recommending individual rates for working wives, reduction in the marginal rates for working wives, family allowances, and refundable dependent care tax credits). *But see* Dorothy A. Brown, *Race, Class, and Gender Essentialism in Tax Literature: The Joint Return*, 54 WASH. & LEE L. REV. 1469 (1997) (gender bias literature must examine class and race differences among women before proposing solutions).
170. *See* Deborah M. Weiss, *Can Capital Tax Policy be Fair? Stimulating Savings through Differential Tax Rates*, 78 CORNELL L. REV. 206 (1993).
171. *See* Kurt Hartmann, *The Market for Corporate Confusion: Federal Attempts to Regulate the Market for Corporate Control through the Federal Tax Code*, 6 DEPAUL BUS. L.J. 159 (1993-94).
172. *See* Danshera Cords, *The Medical Savings Account Provision of the HIPAA: Is It Sound Health and Tax Policy*, 21 SEATTLE U.L. REV. 1217 (1998).
173. *See* Christopher T. Nixon, *Should Congress Revise the Tax Code to Extend the Same Tax Benefits to Same-Sex Couples?: An Analysis in Light of Horizontal Equity*, 23 S. ILL. U. L. J. 41 (1998).
174. *See* Beverly I. Moran & William Whitford, *A Black Critique of the Internal Revenue Code,* 1996 WIS. L. REV. 751 (1996).
175. *See* Daniel S. Goldberg, *Tax Subsidies: One-time vs. Periodic An Economic Analysis of the Tax Policy Alternatives*, 49 TAX L. REV. 305, 347 (1994) (periodic tax subsidies should be rejected unless Congress is willing to define, specifically limit and guarantee their duration). *But see* Michael J. Graetz, *Legal Transitions: The Case of Retroactivity in Income Tax Revision*, 126 U. PA. L. REV. 47, 85 (1977-78) Repeal of tax-favored treatment for particular investments would be the least likely category of change for which the parties would agree to require grandfather clauses.
176. *See* David M. Schizer, *Realization as Subsidy*, 73 N.Y.U. L. REV. 1549, 1624 (Nov. 1998) (noting conflict between progressivity and savings subsidy); Deborah M. Weiss, *Tax Incentives without Inequity*, 41 UCLA L. REV. 1949 (1994) (any tax inequity can be offset by the imposition of surplus taxes and by using credits rather than deductions to satisfy objectives); Kaye, *supra* note 168 (discussing the conflict between tax policy and social policy in the context of the low-income housing credit).
177. Professor Thuronyi noted in an article defining the concept of income that as a political matter that a tax subsidy often has a better chance of being enacted and preserved than a nontax program and the tax system may be the only feasible avenue for some social programs. Thuronyi, *The Concept of Income*, 46 TAX L. REV. 45, 93 (Fall, 1990).
178. H.R. 3448, Public Law 104-188, 2d Session (Aug. 20, 1996).
179. However, under the Federal Adoption Assistance program, a Federal outlay program, an individual adopting a special needs child could receive a maximum reimbursement of $1000 for expenses related directly to the adoption. *See* Joint Committee on Taxation's General Explanation of Tax Legislation Enacted in the 104th Congress, at 200 (CCH Incorporated 1996).
180. Nonrefundable credit means that the credit can only be used to offset tax imposed on a return. If the taxpayer does not have any tax due, the amount of the credit is not refunded to the taxpayer. Alternatively, a taxpayer may receive a cash payment from the Internal Revenue Service if the credit is refundable. *See, e.g.*, I.R.C. §§ 32 and 42 (1999). The taxpayer may carry forward the

unused portion of the credit for 5 years. I.R.C. § 23 (c) (1999).

181. Some scholars have opined that the credit does little to encourage adoptions, particularly domestic children those in the foster care system. *See* Erika Lynn Kleiman, Comment, *Caring for our Own: Why American Adoption Law and Policy Must Change*, 30 COLUM. J.L. & SOC. PROBS. 327, 367 (1997) (citing Stephan Saul, *Adoption Tax Credit Called Positive, But No Panacea*, CHI. SUN-TIMES, May 27, 1996, at 13; Editorial, *Adoption Rhetoric and Reality*, CHI. TRIB., May 12, 1996, at 22, Editorial, *A Misguided Adoption Credit*, N.Y. Times, May 11, 1996, at A18
182. I.R.C. § 23(a)(1) and (b) (1999). If the adoption involves a special needs child, the maximum credit is $6000. I.R.C. § 23(b)(1) (1999). A special needs child is one who cannot or should not be returned to the parents' home or will have difficulty being adopted because of factors such as age, race or the presence of a handicap. I.R.C. § 23(d)(3) (1999).
183. I.R.C. § 137(a) and (b) (1999). If the adoption involves a special needs child, the taxpayer is able to exclude up to $6000 of expenses paid or incurred for "qualified adoption expenses" as defined by section 23(d).
184. I.R.C. §§ 23(b)(2) and 137(b)(2) (1999). The credit is available only for the adoption of special needs children after tax year 2001. I.R.C. § 23(d)(2)(B) (1999).
185. Joint Committee on Taxation, General Explanation of Tax Legislation in the 104[th] Congress, (JCS-12-6) December 19, 1996 at 246-8.
186. *See* I.R.C. § 42(a) and (b) (1999).
187. The RIA Complete Analysis of the Revenue Reconciliation Act of 1993 ¶ 705 at 178 (Research Institute of American 1993).
188. Pub. L. No. 103-66, section 13142(a)(1).
189. H.R. Rep. 103-111, pt. 43, at 2 (1993).
190. *See* I.R.C. § 25A (1999).
191. *See* I.R.C. § 25A(c) (1999).
192. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997, Blue Book (CCH) at 14. A taxpayer must elect to take the Lifetime learning tax credit or the HOPE credit with respect to one or more students. *See* I.R.C. § 25A(c)(2)(A) (1999).
193. I.R.C. § 25A(b) and (f)(1). The credit is phased out ratably for taxpayers with adjusted gross income between $40,000 and $50,000 ($80,000 and $100,000) for couples filing joint returns). I.R.C. § 25A(d). Qualified tuition and related expenses mean required tuition and fees for the taxpayer, taxpayer's spouse and taxpayer's dependents. I.R.C. § 25A(f) (1999).
194. I.R.C. § 25A(c) (1999). The credit increases to $10,000 for tax years beginning after 2002.
195. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 (CCH), at 23 (1997).
196. I.R.C. § 221 (1999). For taxable years 1999, 2000 and 2001 or thereafter, the maximum deduction is $1500, $2000 and $2500, respectively. The deduction is phased out ratably for taxpayers with modified adjusted gross income of $40,000 to $55,000 ($60,000 to $75,000 for individuals who file joint returns).
197. I.R.C. § 408A (1999).
198. I.R.C. § 408A(d)(2)(A)(i) and (B).
199. J.C.S. 23-97 pg. 42.
200. I.R.C. § 72(t)(2)(F) (1999)
201. J.C.S. 23-97 pg. 43.
202. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 (CCH), at 49. Under the Taxpayer Relief Act of 1997, the 20 percent rate did not apply to capital assets held for 18 months or less. Rather, the maximum rate for those assets was 28 percent. However, under the IRS Restructuring and Reform Act of 1998, the so-called mid-term rate of 28 percent has been

eliminated.

203. Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1997 (CCH), at 48 (1997).
204. Prior to the enactment of the new section 121, there were two provisions in the Code that dealt with the sale of a principal residence. Under the prior section 121, a taxpayer who was at least 55 years who sold a home in which the taxpayer had resided in the home for 3 of the 5 preceding years, that taxpayer could exclude from income up to $125,000 on the sale of the residence. Under section 1034, a person could defer the gain from the sale of a principal residence until the taxpayer sold a home purchased within 2 years from the sale of the first home. In order to "rollover the gain, the taxpayer had to purchase a home that cost at least same as the sales price of the old residence.
205. The taxpayer must have lived in the residence for two of the last five years. If the taxpayer is married and files a joint return, the exclusion increases to $500,000. I.R.C. § 121 (a) and (b) (1997).
206. J.C.S. 23-97, pg. 54-55 (1997). The legislative history also provided that prior law discouraged older taxpayers to sell their homes if they had already utilized the one time $125,000 exclusion, resulting in their lack of mobility. *Id.* at 55.
207. I.R.C. § 32 (1999).
208. S. Rep. No. 94-36, at 22 (1975).
209. S. Rep. No. 94-36, at 5 (1975)
210. I.R.C. § 32(c)(2) (1999). These items are included in a taxpayer's gross income. I.R.C. § 61 (a)(1) (1997).
211. For taxable year 1997, taxpayers with no children received the maximum credit if earned income was between $4300 and $5450. CCH 1998 US Master Tax Guide § 87 (81st Ed.) Taxpayers with one child are entitled to the maximum credit when earned income is between $6500 and $11,950. *Id.* Taxpayers with two or more qualifying children are entitled to the maximum credit when income is earned $9100 and $11,950. *Id.*
212. I.R.C. § 32(i) (1999).
213. Rev. Rul. 73-87, 1973-1 C.B. 39
214. *Id.* The Office of Economic Opportunity received authority under the Economic Opportunity Act of 1964, Public Law 88-452; 78 State. 508, 42 U.S.C.A. § 2701 et seq., to make grants "for the purpose of providing stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty through community action programs". Rev. Rul. 73-87, 1973-1 C.B. 39.
215. Ordinarily, when another person satisfies a personal obligation of a taxpayer, such as paying taxes either directly or indirectly to the government on that person's behalf, the taxpayer has to include the amount so paid in gross income. *See* Old Colony Trust Co. v. Comm'r, 279 U.S. 716 (1929).
216. Rev. Rul. 73-87 1973-1 C.B. 39.
217. Rev. Rul. 63-136 1963-2 C.B. 19.
218. *Id.* at 3.
219. P.L. 104-193, H.R. 3734, 110 Stat. 2105 (Aug. 21 1996).
220. According to Gary J. Stangler, director of the Missouri Department of Social Services, community participation should help satisfy the Federal welfare law requirement that 25 percent of families receiving assistance must have one parent working at least 20 hours a week. Peter Kilborn, *Promising Trade-Off for the Needy*, N.Y. TIMES, Sept. 29, 1996 at A16. *Accord* Rowe, *Money with Care Built In*, YES! A J. OF POSITIVE FUTURES, Spring 1997, at 25 ("[T]he work will qualify under the new welfare bill).

221. For example, the state of Oklahoma defines community service programs as "job-training activities provided in areas where sufficient public or private sector employment is not available. OKLA. STAT. ANN. tit. 56, § 230.52(A)(4)(g)(1998).
222. For example, Vermont established a program called the Vermont Community Service Employment program that develops jobs for individuals who have been unable to locate jobs to enable them to continue receiving benefits under the Temporary Assistance for Needy Families (TANF) program. TANF benefits continue even though the individuals have reached the maximum time limit for receiving benefits. Steve Savner and Mark Greenberg, *Community Service Employment: A New Opportunity Under TANF*, CENTER FOR LAW AND SOCIAL POLICY, Nov. 1997.
223. Congressman William F. Goodling from Pennsylvania wrote that he believes that the work requirements were the most successful aspect to welfare reform. See Goodling, *The Successful Work in Welfare*, 9 STAN. L. & POL'Y REV. 45 (1998). Congressman Goodling stated in the article that the number of families on welfare has dropped by more than 10 percent since the welfare reform was enacted. Id. at 48.
224. States may establish good cause exceptions to the two year time limit. Pub. L. No. 104-93 (1996).
225. The percentage increases by 5 each year to 50 percent by fiscal year 2002.
226. The community service requirement requires any individual who is not employed or who is exempt from work must participate in community service after the recipient has received two months of assistance. TANF gives states discretion to determine how many hours a person must work in order to meet this requirement. The federal government does not penalize states for failure to comply with this provision.
227. 42 U.S.C.A. § 607(d).
228. *See, e.g.*, CAL. WELF. & INST. CODE § 11454 (1998) (after 4 week job search recipient can receive aid for 18 months at a time with a 5 year lifetime limit, including TANF benefits received in other states); CONN. GEN. STAT. § 17b-112 (1997) (21 month limit on assistance with unlimited 6 month extension based on certain circumstances); DEL. CODE ANN. tit. 31, § 1503 (1998) (benefits limited to 48 months, with some extensions available); GA. CODE ANN. tit. 49, ch. 4 (1998) (48 month lifetime limit); IND. CODE tit. 12, Art 14, Ch. 2 (1998) (24 month lifetime limit; an extra month of benefits is earned for every 6 months of work, with a 24 month cap on the extra months of benefits); MISS. CODE ANN. § 43-17-5(3)(b)(1998) (benefits denied after adult receives TANF assistance for 60 months); OKLA. STAT. ANN. tit. 56, § 230.52(A)(1) (West 1998) (recipient entitled to TANF benefits for a lifetime total of five years).
229. *See, e.g.*, ARK. CODE ANN. § 20-76-402(a)(4) (1999) (community service requirement designed to allow recipients to "develop job skills and improve work habits through time-limited unsalaried job training at a clearly defined, well supervised worksite"); CONN. GEN. STAT. § 17b-112 (1997) (work activities include community service but no criteria provided); FLA. STAT. ANN.§ 414.065(1)(d) (community service may be selected to increase employability and must provide job training experience at a supervised not-for-profit agency); N.M. STAT. ANN. §§ 27-2B-5(A)(community service meets work requirements but no delineated definition of community service); N.Y. SOC. SERVICES § 336 McKinney 1998) (community service qualify for work activities but no criteria set forth in statute); OKLA. STAT. ANN. tit. 56, § 230.52(A)(5) (West 1998) (job-training activities where employment is unavailable linked to activities that substantially enhance a recipient's employability); TEX HUM. RES. § 31.0125(b)(4) (West 1998) (community service job must provide job training and work experience); WIS. STAT. § 49.147(4)(a)(1998) ("projects that. . .serve a useful public purpose or projects the cost of which is partially or wholly offset by revenue generated by the projects").

230. *See*, e.g., CAL. WELF. & INST. CODE § 11320.3 (once in a lifetime 6 month exemption following birth of a child); CONN. GEN. STAT. § 17b-112 (1997) (exemptions include an adult relative needed in the home because of the incapacity of another member of the household); MISS. CODE ANN.§ 43-17-5(6)(b)(1998) (exemptions include an adult in the third trimester of pregnancy, a caretaker of a severely disabled child and a victim of domestic abuse); WYO. STAT. ANN. § 42-2-103(d) (benefits financed with state funds rather than TANF grants and program exemption granted for individual fleeing for personal safety not to exceed two years)
231. Mary Beth Lane, *Appalachian Welfare Recipients Eager for 'Real Jobs': Counties Must Use Programs that Offer Work Experience,* The Plain Dealer, July 6, 1998, at 6A.
232. Joe Sullivan, *Putting all the pieces together: How the church responds to welfare reform*, U.S. CATHOLIC, Vol. 63, No. 7 (July 1, 1998).
233. WIS. STAT. §§ 49.141 - 49.161 (1999).
234. For a detailed analysis of the W2 program see M. Scanlan, *The End of Welfare and Constitutional Protections for the Poor: A Case Study of the Wisconsin Works Program and Due Process Rights*, 13 BERKELEY WOMEN'S L.J. 153 (1998).
235. Prior to the enactment of W2, the Policy Research Institute submitted a proposal to the Governor of Wisconsin that proposed to replace Aid to Families with Dependent Children (AFDC) and food stamps with a basic cash grant, the Earned Income Tax Credit and Time Dollars. Policy Research Institute, "Report: Ending Welfare In Wisconsin," (Vol. 7, No. 8, Nov. 1994). One requirement under the proposal for continued receipt was that recipients had to participate in the Time Dollars programs within an established time period. *Id.* The ultimate objective was to build a program that encouraged full participation by creating incentives to move into the workforce. *Id.*
236. *See* Clifford M. Johnson, *Preparing People for Work: State Options and Their Fiscal Implications*, 4 GEO. J. ON FIGHTING POVERTY 171 (Fall 1996)(states need to invest approximately $12.3 billion into work and training programs to meet federal guidelines).
237. *See* "State Progress on Implementing Welfare Reform: Extension of Remarks by William T. Pound, Executive Director, National Conference of State Legislatures, (visited Nov. 3, 1998) <http://www.ncsl.org/state/fed/welf2 11.htm>
238. *Time Dollar Gets the County OK!*, San Joaquin Valley Time Dollar Collaborative (California Commission on Improving Life Through Services), Summer 1991, at 1.
239. Theresa Tighe, *As Welfare Changes, Barter Program Catches Interest*, ST. LOUIS POST-DISPATCH Jan. 30, 1997, at 1A.
240. Stanley W. Carlson-Thies, "*Don't Look to Us: The Negative Responses of the Churches to Welfare Reform,* 11 NOTRE DAME J.L. ETHICS & PUB. POL'Y 667, 686 (1997).
241. *See supra* notes 26 and 27 and the accompanying text.
242. Prior to the enactment of PRWORA Professor Mary L. Heen wrote an extensive article addressing the impact of the new welfare initiatives on child-care assistance costs. See generally Mary L. Heen, *Welfare Reform, Child Care Costs, and Taxes: Delivering Increased Work-Related Child Care Benefits to Low-Income Families*, 13 YALE L. & POL'Y REV. 173, 193-94 (1995) (stating "[i]nadequate funding for work-related child care for low-income families raises serious concerns and the mandatory work requirements will not succeed without adequate Federal or state funding).
243. *See supra* note 227 and the accompanying text.
244. Laura Meckler, *Study: Welfare Workers Need Skills*, Associated Press, March 10, 1999, *available in* 1999 WL 13837220.
245. *Id.*
246. *Id.*

247. Shailagh Murray, *Drop in Food-Stamp Rolls Is Mysterious and Worrisome*, THE WALL ST. J. August 2, 1999, at A20.
248. Studies indicate that the government's creation of the earned income credit as a means for subsidizing the impoverished generally costs more than the direct expenditures provided under the former AFDC program. See George K. Yin et al., *Improving the Deliver of Benefits to the Working Poor: Proposals to Reform the Earned Income Tax Credit Program*, 11 AM. J. TAX POL'Y 225, 228-29 (1994) (the earned income credit for taxable year 1998 would cost approximately $24.5 billion while the Federal contribution for the AFDC program would be $16 billion).
249. Robert J. Sampson, Stephen W. Raudenbush, & Felton Earls, *Neighborhoods and Violent Crime: A Multilevel Study of Collective Efficacy*, 277 SCI. 873, Aug. 15, 1997.
250. *Id.* at 922.
251. *Id.*
252. *See* 42 SOCIAL WORK 255, *Building a Neighborhood Network: Interorganizational Collaboration to Prevent Child Abuse and Neglect*, No. 3, May 1997.
253. Philadelphia Park Amusement Co. v. U.S., 126 F. Supp. 184 (1954).
254. A taxpayer is entitled to deductions from expenses related to the taxpayer's trade or business. I.R.C. § 162 (1999).
255. *See supra* note 206 and accompanying text.
256. *Id.*
257. *See id.*
258. *See supra* notes 30-32 and accompanying text.
259. F.3d 72 (1996). *See supra* notes 113-117 and the accompanying text.
260. *See* I.R.C. §1011 (1999).
261. *See supra* note 131 and the accompanying text.
262. The donee's basis in the property is determined under section 1015 which dictates a "carryover basis."
263. 513 F.2d 224 (1975). *See supra* footnotes 119-122 and the accompanying text.
264. Lewyt Corp. v. Comm'r, 349 US 237, 240 (1955).
265. Dresser Indus. v. Comm'r, 911 F.2d 1128 (1990); Rickard v. Comm'r, 88 TC 188, 193 (1983); and Manocchio v. Comm'r, 78 TC 989, 997 (1982).
266. Tax Report, "Millionaires want to use charge cards to pay their taxes, too." WALL ST. J. Wed., March 3, 1999, at A1.
267. *Id.*