

CARDOZO LAW REVIEW
de•novo

THE SERVICE’S OVERGENEROUS TAX TREATMENT
OF CROWDFUNDING

Jeffrey H. Kahn[†]

TABLE OF CONTENTS

INTRODUCTION.....	58
I. THE KICKSTARTER MODEL—CROWDFUNDING PROJECTS	58
II. GOFUNDME CROWDFUNDING	61
III. DETACHED AND DISINTERESTED GENEROSITY	62
IV. CONSUMPTION AND GIFTS	64
V. GOFUNDME RECIPIENTS AND CRAPS DEALERS	65
CONCLUSION	66

[†] Harry M. Walborsky Professor of Law and Associate Dean for Business Law Programs,
Florida State University College of Law.

INTRODUCTION

Recently, the Internal Revenue Service (“the Service”) released a fact sheet reminder of “tax guidelines involving contributions and distributions from online crowdfunding.”¹ The Service stated that “[c]rowdfunding is a method of raising money through websites by soliciting contributions from a large number of people. The contributions may be solicited to fund businesses, for charitable donations or for gifts.”² Examples of crowdfunding websites are Kickstarter³ and GoFundMe.⁴ This article reviews the tax treatment of crowdfunding and criticizes one important determination of the Service’s fact sheet.

I. THE KICKSTARTER MODEL—CROWDFUNDING PROJECTS

One popular website for crowdfunding projects is Kickstarter. As of March 2025, Kickstarter claims to have funded over 250,000 projects and raised more than \$8 billion.⁵ Although the website claims to not be a “store,” users pledge money to projects in exchange for something of value, specifically “rewards that speak to the spirit” of the project.⁶ For example, the largest Kickstarter campaign ever was created by fantasy

¹ Fact Sheet, Internal Revenue Service, IRS Reminds Taxpayers of Important Tax Guidelines Involving Contributions and Distributions From Online Crowdfunding, <https://www.irs.gov/newsroom/irs-reminds-taxpayers-of-important-tax-guidelines-involving-contributions-and-distributions-from-online-crowdfunding> [https://perma.cc/TJ5C-ET3M] (Aug. 29, 2024).

² *Id.*

³ *What is Kickstarter?*, KICKSTARTER, <https://help.kickstarter.com/hc/en-us/articles/115004996453-What-is-Kickstarter> [https://web.archive.org/web/20250130131500/https://help.kickstarter.com/hc/en-us/articles/115004996453-What-is-Kickstarter] (describing Kickstarter as “a funding platform for creative projects”). Although it claims “not [to be] a store, backers pledge to projects to help them come to life and support a creative process. To thank their backers for their support, project creators offer unique rewards that speak to the spirit of what they’re hoping to create.” *Id.*

⁴ *How Fundraising on GoFundMe Works*, GOFUNDME, <https://www.gofundme.com/c/how-it-works> [https://perma.cc/ZG9M-YWBK] (“GoFundMe is the trusted place to fundraise for what you care about.”). Unlike Kickstarter, GoFundMe is solely soliciting donations without promising anything in return. *GoFundMe Terms of Service*, GOFUNDME, <https://www.gofundme.com/c/terms> [https://perma.cc/3PTC-TM43] (“You also agree not to provide or offer to provide goods or services in exchange for donations.”); *infra* text accompanying note 6.

⁵ *Bring a Creative Project to Life*, KICKSTARTER, <https://www.kickstarter.com> (last visited Mar. 6, 2025).

⁶ See *What is Kickstarter?*, *supra* note 3. The Kickstarter rules make it clear that funds must be raised for a “project,” not merely for donations to a charity or cause. *Our Rules*, KICKSTARTER, <https://www.kickstarter.com/rules> (last visited Mar. 9, 2025). The rules also state that Kickstarter projects cannot offer equity or revenue sharing. *Id.*

author Brandon Sanderson.⁷ Raising almost \$42 million, backers pledged at different levels depending on whether they wanted Sanderson's new works in ebook, audiobook, or hardback form.⁸

The tax result to the creator of the project is simple. The taxpayer has income for any funds received on account of their Kickstarter project.⁹ The funds are essentially preorders for whatever the project creator has promised to provide to the backers.¹⁰

A more difficult tax question (and one not discussed by the fact sheet) arises if the Kickstarter project falls through and the backers receive neither what was promised nor a refund of their funds. According to a 2015 study by Professor Ethan Mollick from the Wharton School of the University of Pennsylvania, the failure rate for funded projects was around nine percent.¹¹ In only thirteen percent of those failed cases did the backers receive a refund.¹² Should a taxpayer be able to take a tax loss for a Kickstarter project that they back and does not deliver? Assuming that the taxpayer backed something personal (as opposed to something that he or she planned to use for investment or business purposes), the answer is probably not.

As a personal loss, the only provision that might allow a deduction is § 165(c)(3) of the Internal Revenue Code of 1986 ("Code").¹³ Since

⁷ Sarah Whitten, *Fantasy Author's Record-Breaking Kickstarter Campaign Closes at \$41.7 Million*, CNBC (Mar. 31, 2022), <https://www.cnbc.com/2022/03/31/authors-record-breaking-kickstarter-campaign-closes-at-41point7-million.html> [<https://perma.cc/QT9N-XCLN>].

⁸ *Surprise! Four Secret Novels by Brandon Sanderson*, KICKSTARTER, https://www.kickstarter.com/projects/dragonsteel/surprise-four-secret-novels-by-brandon-sanderson?ref=discovery_most_funded&total_hits=631569&category_id=47 (last visited Apr. 3, 2025). The ebooks version required a \$40 pledge, while the hardcover books required a \$160 pledge. *Id.*

⁹ I.R.C. § 61(a); Fact Sheet, *supra* note 1 ("Under federal tax law, gross income includes all income from whatever source derived unless it is specifically excluded from gross income by law."); see also *Kickstarter and Taxes*, KICKSTARTER, <https://www.kickstarter.com/help/taxes> (last visited Mar. 22, 2025) ("In general, in the [U.S.], funds raised on Kickstarter are considered income.").

¹⁰ *Kickstarter and Taxes*, *supra* note 9. The payments should not be characterized as nontaxable gifts under I.R.C. § 102 because the payments to Kickstarter fundraisers are made with the expectation of receiving something in return. I.R.C. § 61(a)(1); Fact Sheet, *supra*, note 1 (emphasis added) ("If crowdfunding contributions are made as a result of the contributors' detached and disinterested generosity, and without the contributors receiving or expecting to receive anything in return, the amounts may be gifts and therefore may not be includible in the gross income of those for whom the campaign was organized.").

¹¹ Ethan R. Mollick, *Delivery Rates on Kickstarter 5* (Dec. 2, 2015) (unpublished survey) (on file with SSRN), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2699251 [<https://perma.cc/WA6N-RMB4>].

¹² *Id.* at 6.

¹³ I.R.C. § 165(a) provides the general rule that "[t]here shall be allowed as a deduction any loss sustained during the taxable year and not compensated for by insurance or otherwise." I.R.C. § 165(a). § 165(c) limits the deduction of such losses for individuals to business losses, investment

nonfulfillment will not qualify as an “other casualty,” the taxpayer’s sole chance for a deduction is to label the loss as a theft loss.¹⁴ A “theft” is defined “general[ly] and broad[ly]” and is meant to cover “any criminal appropriation of another’s property to the use of the taker, particularly including theft by swindling, false pretenses and any other form of guile.”¹⁵ The Service stated that in determining if a theft has occurred, the laws of the local jurisdiction where the alleged theft happened shall apply.¹⁶

Would Kickstarter nonfulfillment qualify under this standard as theft loss? It depends on both local law and the facts and circumstances of the project. If a taxpayer could prove the creator never intended to fulfill the project, then the taxpayer likely qualifies in every jurisdiction.¹⁷ However, if the creator did intend to fulfill but some circumstance caused the project to fail (such as incorrect budgeting, increased costs, etc.), then it will likely be more difficult to meet the theft standard.¹⁸

Of course, there is the added hurdle that a taxpayer will likely only be able to use the theft loss deduction for any nonfulfilled project if (1) the loss exceeds \$100¹⁹ and (2) they happen to also have personal

losses, and personal losses “if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.” I.R.C. § 165(e)(1)–(3).

¹⁴ See Rev. Rul. 72-592, 1972-2 C.B. 101 (“The courts have consistently upheld the [Service] position that an ‘other casualty’ is limited to casualties analogous to fire, storm, or shipwreck.”); DOUGLAS A. KAHN & JEFFREY H. KAHN, FEDERAL INCOME TAX: A GUIDE TO THE INTERNAL REVENUE CODE 326–27 (8th ed. 2019) (“The Commissioner and the courts have made their determination as to whether a loss was caused by an ‘other casualty’ on the basis of whether the nature of the event that caused the loss is analogous to one of the three types of casualties named in the statute (i.e., fire, storm, and shipwreck).”). A failed Kickstarter campaign (one where the backer receives neither the promised reward nor a refund) does not appear analogous to those three categories and will very likely not qualify as an “other casualty” under the provision.

¹⁵ Rev. Rul. 77-18, 1977-1 C.B. 46.

¹⁶ *Id.*

¹⁷ An intentional misrepresentation of a Kickstarter project (that is, misrepresenting that one plans to fulfill the project without any intention to do so) would likely meet the definition of “Theft by Deception” under the Model Penal Code. MODEL PENAL CODE § 223.3 (“A person is guilty of theft if he purposely obtains property by deception. A person deceives if he purposely: (1) creates or reinforces a false impression, including false impressions as to . . . value, intention or other state of mind . . .”). This action easily meets the broad definition of theft recognized by the Service. See Rev. Rul. 77-18, 1977-1 C.B. 46.

¹⁸ Model Penal Code § 223.3 itself notes that “deception as to a person’s intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise . . .” Without the wrongful intention, it will likely not rise up to meet the requirement of a “theft” under the Code. See, e.g., *Bodzy v. Comm’r*, 321 F.2d 331, 335–36 (1963) (“There appears to be no more than allegation of poor business judgment on his part. This does not approximate theft.”); *Shea v. Comm’r*, 79 T.C.M. (CCH) 2112 (2000) (denying theft loss deduction stating “[t]he record suggests only that a very risky business deal was in process and that it went sour at some point in time and for unknown reasons”).

¹⁹ I.R.C. § 165(h)(1).

casualty gains that year.²⁰ Without any personal casualty gains to offset, the Kickstarter loss is unlikely to be deductible (even assuming it exceeds ten percent of the taxpayer's adjusted gross income)²¹ since such loss will not be attributable to a "[f]ederally declared disaster."²²

II. GOFUNDME CROWDFUNDING

The more interesting issue discussed by the Service's fact sheet is the tax results to the recipient of funds from sites like GoFundMe.²³ In its fact sheet, the Service is noncommittal. It states "[w]hether crowdfunding distributions are includible in gross income of the person receiving them depends on all the facts and circumstances of the distribution."²⁴ The fact sheet proceeds to set out the tax rules for gifts, stating that if the contributions "are made as a result of the contributors' detached and disinterested generosity, and without the contributors receiving or expecting to receive anything in return, the amounts may be gifts and therefore may not be includible in the gross income of those for whom the campaign was organized."²⁵

This advice is essentially useless. How is a person to know whether a donation to a GoFundMe campaign was made out of detached and disinterested generosity? Simply giving to a campaign does not automatically meet the requirement.²⁶ Even if it was made with such intent, the Service states that it "may" be considered a gift.²⁷ This implies that there are situations where such amounts will still be income even with the appropriate intent, otherwise the word "shall" would have been more appropriate. The fact sheet does not provide any examples of a scenario that would require the recipient to report the crowdfunded receipts as income.²⁸

The Service's position unnecessarily muddies the issue. Under this advice, every taxpayer will take the position that GoFundMe receipts are nontaxable gifts. The GoFundMe website bolsters this conclusion by stating that donations "made to personal GoFundMe fundraisers are generally considered to be 'personal gifts' which, for the most part, are

²⁰ § 165(h)(2)(A).

²¹ § 165(h)(2)(A)(ii).

²² § 165(h)(5)(A).

²³ Fact Sheet, *supra* note 1.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* (stating that "[c]ontributions to crowdfunding are not necessarily a result of detached and disinterested generosity").

²⁷ *Id.*

²⁸ *Id.*

not taxed as income in the United States.”²⁹ The company covers its rear however by also stating on its website that “there may be particular case-specific instances where the income is taxable for organizers.”³⁰ But GoFundMe makes it clear that it will not report the collected funds as income to the Service.³¹ All of this leads to the likely conclusion that no taxpayer has reported or will report the receipt of GoFundMe funds as income under this system.

One possibility, of course, is that this is the correct tax result and so the fact sheet is a useful reminder of what the Service’s position is and should be. Unlike Kickstarter, there is no quid pro quo with GoFundMe.³² In addition, it is likely that most donations made using the GoFundMe site are genuinely made out of detached and disinterested generosity by the donor.³³ Despite all this, as explained below, any funds received through GoFundMe or similar websites should be considered income to the recipient.

III. DETACHED AND DISINTERESTED GENEROSITY

The phrase “detached and disinterested generosity” was used in the seminal case of *Duberstein v. Commissioner*.³⁴ Code § 102 provides that gifts are excluded from income and thus the recipient of gifts does not pay any tax on the receipt of gifts.³⁵ The question of what qualifies as a gift for purposes of Code § 102 is left to the courts. The facts of *Duberstein* were that, in appreciation of some business referrals, Duberstein received a “gift” of a Cadillac from a business associate.³⁶ Duberstein did not report the value of the Cadillac on his tax return, contending it was a nontaxable gift, and the Service disagreed.³⁷ The

²⁹ *Taxes for Organizers*, GOFUNDME (Nov. 14, 2024), <https://support.gofundme.com/hc/en-us/articles/204295498-Taxes-for-Organizers> [<https://perma.cc/3PG5-5P8U>]. In addition, the website correctly states that such donations are not deductible by the person providing the funds. *Id.*

³⁰ *Id.* (elaborating that “[f]or example, where the donations are considered income to the recipient”).

³¹ *Id.*

³² *See supra* notes 4, 6 and accompanying text.

³³ It is impossible to definitively know why a backer makes a donation through GoFundMe and thus whether they have the appropriate intent under *Duberstein*. *See infra* notes 36–40 and accompanying text. Still, under GoFundMe’s rules, there can be no quid pro quo, and the Supreme Court in *Duberstein* stated that transfers made out of “charity” meet the detached and disinterested standard. *Duberstein v. Comm’r*, 363 U.S. 278, 285 (1960). It is therefore likely a safe assumption that most donations would qualify under the *Duberstein* test.

³⁴ 363 U.S. 278, 285 (1960) (quoting *Comm’r v. LoBue*, 351 U.S. 243, 246 (1956)).

³⁵ I.R.C. § 102.

³⁶ *Duberstein*, 363 U.S. at 280.

³⁷ *Id.* at 281.

Service won at the Tax Court,³⁸ but the Sixth Circuit reversed.³⁹ The Supreme Court granted certiorari and held for the Service, setting out the standard for courts to use when determining whether something is a gift in future cases.⁴⁰

While *Duberstein* is the most cited case on the definition of gifts for income tax purposes, it did not actually break new ground. It mostly restated standards that were used before by other courts.⁴¹ Even the standard “detached and disinterested generosity” was applied in a previous Supreme Court decision.⁴² Despite its status as the standard to use for whether a transfer qualifies as a gift for tax purposes, courts have noted that it is not a particularly helpful standard. One court referred to it as more “sound bite than talisman.”⁴³

It is helpful, when considering what should qualify as a gift for tax purposes, to consider why gifts are excluded in the first place. When one focuses on the recipient of the gift, there is an obvious argument that gifts should be considered income. Take a simple example: two taxpayers each receive \$100,000, but one receives it as a gift and one as compensation for services. Since both receive \$100,000, horizontal equity⁴⁴ suggests that the tax system should treat them the same for tax purposes—that is, they should both have income, and the source of the income is irrelevant. Many commentators have argued this and contend that the tax treatment of gifts should be changed.⁴⁵

Why then are gifts excluded? One argument is administrative: it would be simply too difficult for the Service to oversee a system where gifts would be considered income.⁴⁶ I have argued in previous work, however, that the current tax treatment is supported by a valid policy

³⁸ *Duberstein v. Comm’r*, 17 T.C.M. (CCH) 16 (1958).

³⁹ *Duberstein v. Comm’r*, 265 F.2d 28, 31 (6th Cir. 1959).

⁴⁰ *Duberstein*, 363 U.S. at 284, 288–89, 293.

⁴¹ *See id.* at 285–86.

⁴² *Comm’r v. LoBue*, 351 U.S. 243, 246 (1956).

⁴³ *Goodwin v. United States*, 67 F.3d 149, 152 n.3 (8th Cir. 1995). The Supreme Court itself noted that its test “may not satisfy an academic desire for tidiness, symmetry and precision in this area.” *Duberstein*, 363 U.S. at 290.

⁴⁴ “Horizontal equity” is the tax policy principle that taxpayers with similar income should pay similar amounts of tax. Jeffrey H. Kahn, *The Mirage of Equivalence and the Ethereal Principles of Parallelism and Horizontal Equity*, 57 HASTINGS L.J. 645, 645 (2006).

⁴⁵ *See, e.g.*, Joseph M. Dodge, *Beyond Estate and Gift Tax Reform: Including Gifts and Bequests in Income*, 91 HARV. L. REV. 1177 (1978); William A. Klein, *An Enigma in the Federal Income Tax: The Meaning of the Word “Gift,”* 48 MINN. L. REV. 215 (1963).

⁴⁶ *See* Marjorie E. Kornhauser, *The Constitutional Meaning of Income and the Income Taxation of Gifts*, 25 CONN. L. REV. 1, 35–36 (noting the enforcement problems but suggesting that they are not insurmountable).

justification.⁴⁷ The next Part briefly reviews the arguments that I previously made supporting the current tax treatment of gifts.⁴⁸

IV. CONSUMPTION AND GIFTS

One generally accepted academic definition of income is that income for a period is comprised of two items: (1) present value of consumption and (2) accumulation of wealth.⁴⁹ This is referred to as the Haig-Simons definition of income.⁵⁰ Some commentators have argued that this definition supports the taxation of gifts since the source of the income appears to be irrelevant under this definition.⁵¹ This argument, however, focuses on the wrong party. Instead of the donee, one should look to the donor to understand the policy justification for the current tax treatment of gifts. Taxing income is a proxy measurement for the consumption that the taxpayer will do with that income.⁵² Thus, while consumption appears to be only half of the Haig-Simons formula, it is essentially all of it. The difference between a consumption tax and an income tax is that the income tax taxes the present value of future consumption by including accumulated wealth in the tax base whereas a consumption tax would wait until the money is actually used to consume.⁵³

Taxing consumption is justifiable, but using it as the basis for defining income also provides policy justifications for situations involving exclusions from income. Gifts provide an ideal example. Assume A gives a gift of \$10,000 to B. Has A consumed that amount? Clearly not, there is no consumption of resources or acquisition of some property to the exclusion of others. Instead, the consumption will take

⁴⁷ See generally Douglas A. Kahn & Jeffrey H. Kahn, “Gifts, Gifts, and Gifts”—*The Income Tax Definition and Treatment of Private and Charitable “Gifts” and a Principled Policy Justification for the Exclusion of Gifts from Income*, 78 NOTRE DAME L. REV. 441 (2003).

⁴⁸ See *infra* Part IV.

⁴⁹ See HENRY C. SIMONS, PERSONAL INCOME TAXATION 50 (1938).

⁵⁰ See Lawrence Zelenak, *Debt-Financed Consumption and a Hybrid Income-Consumption Tax*, 64 TAX L. REV. 1, 1 (2010).

⁵¹ See, e.g., Dodge, *supra* note 45, at 1183–87 (“[I]t is axiomatic that receipts should be included in income regardless of source or nature.”); see also SIMONS, *supra* note 49, at 128 (“The income tax is not a tax upon income but a tax upon persons according to their respective incomes; and . . . the objective of policy must be fairness among persons, not fairness among kinds of receipts.”).

⁵² SIMONS, *supra* note 49, at 49–50; Kahn & Kahn, *supra* note 47, at 453 (“[T]he ‘income’ of an individual can be viewed as a surrogate for consumption—measuring the value of the individual’s current consumption plus the present value of the future consumption . . .”).

⁵³ See Zelenak, *supra* note 50, at 1 (“The base of an ideal consumption tax . . . is simply the market value of rights exercised in consumption during the period in question. Thus, an income tax includes saved (unconsumed) income in the tax base, whereas a consumption tax does not.”).

place when B uses the \$10,000 for her own consumption. Basically, A has determined that she would receive more utility from having B consume society's assets with the money rather than A consuming it herself. For this limited purpose, we are treating A and B as one entity. We see similar treatment with the basis rules for gifts of property as the donee steps into the shoes of the donor and takes the same basis in the property that the donor had at the time of the gift.⁵⁴

V. GOFUNDME RECIPIENTS AND CRAPS DEALERS

All of this seems to suggest that donations to a GoFundMe campaign should be nontaxable to the recipient of those funds. The donors are not receiving anything in return for their donation, and they are not consuming any of society's assets. However, nonconsumption is not the only consideration when determining the tax treatment of gifts. The case of *Olk v. United States*⁵⁵ provides an example of a situation where other policy considerations come into play and trump the general nontaxable treatment of what appears to be gifts under *Duberstein*.

Olk involved casino crap dealers and the question of whether chips (or "tokens") that patrons provided to the dealers should be considered income to the recipient dealers.⁵⁶ Unlike tips to waitstaff or cab drivers, only a tiny percentage of casino patrons transferred tokens to the dealers.⁵⁷ In addition, unlike the general consideration for "normal" tips, there was no quid pro quo allowed.⁵⁸ Casino dealers were forbidden from showing favor to those who provided tokens over those that did not.⁵⁹ The collected tokens were placed in a common pool and split evenly among the dealers.⁶⁰

The district court held for the taxpayers (thereby excluding the tokens from income), finding that such transfers were done out of "impulsive generosity" and were the "result of detached and disinterested generosity."⁶¹ The Ninth Circuit correctly reversed this decision and held for the Service.⁶² To counter the lower court's findings of the appropriate intent by the game players, Judge Sneed stated that the tokens should be

⁵⁴ I.R.C. § 1015(a). This is subject to the exception for property which has a basis that is greater than the fair market value at the time of the gift. *Id.*

⁵⁵ 536 F.2d 876 (9th Cir. 1976).

⁵⁶ *Id.* at 876.

⁵⁷ *Id.* at 877 ("[B]etween 90-95% of the patrons give nothing to a dealer.").

⁵⁸ *Id.*

⁵⁹ *Id.* ("Dealers must treat all patrons equally, and any attempt to provide special service to a patron is grounds for termination.").

⁶⁰ *Id.* ("[A] dealer would be terminated if he kept a token rather than placed it in the common fund.").

⁶¹ *Olk v. United States*, 388 F. Supp. 1108, 1114 (D. Nev. 1975).

⁶² *Olk*, 536 F.2d at 876.

considered a “[t]ribute to the gods of fortune which it is hoped will be returned bounteously soon”⁶³ Judge Sneed held that such hope meant the players were “involved and intensely interested” and thus the *Duberstein* standard was not met.⁶⁴

It seems clear that Judge Sneed felt he had to proffer this argument to deal with the *Duberstein* intent test. However, later in the opinion, he provides the better justification for the correct result:

Moreover, in applying the statute to the findings of fact, we are not permitted to ignore those findings which strongly suggest that tokens in the hands of the ultimate recipients are viewed as a receipt indistinguishable, except for erroneously anticipated tax differences, from wages. The regularity of the flow, the equal division of the receipts, and the daily amount received indicate that a dealer acting reasonably would come to regard such receipts as a form of compensation for his services. The manner in which a dealer may regard tokens is, of course, not the touchstone for determining whether the receipt is excludable from gross income. It is, however, a reasonable and relevant inference well-grounded in the findings of fact.⁶⁵

Olk thus provides the perfect example of a situation where, despite the appropriate donor intent and the lack of consumption, the transfer should still be considered income to the recipient. Essentially, situations can arise where other policy considerations are more important and therefore trump the usual tax treatment of a “gift” where there is no consumption by the donor. There is no mathematically precise test on when this exception should kick in; it is a facts and circumstances test. As *Olk* provided, we should consider how the transferee views the payment to help determine whether the exception should become the rule. Still, the factors present in *Olk* are not the only ones that should be considered.

CONCLUSION

The issue then is whether donations to GoFundMe should be evaluated under the traditional *Duberstein* analysis⁶⁶ (as set out by the Service in the fact sheet)⁶⁷ or should be considered an exception, like *Olk*, where other considerations trump the *Duberstein* standard and instead suggest that such transfers should be income, even when the transferors

⁶³ *Id.* at 879.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *See supra* Part III.

⁶⁷ Fact Sheet, *supra* note 1.

have detached and disinterested generosity and there is no consumption.⁶⁸ The correct application should be that using GoFundMe to solicit donations removes the money transfers from the traditional *Duberstein* analysis. GoFundMe does not charge a fee to create a fundraiser, but it does collect a transaction fee for each donation.⁶⁹ This moves the donations into the commercial space which supports the conclusion that this is more similar to *Olk* than *Duberstein*. Using any commercial website to solicit donations should lead to the conclusion that all donations collected via that site are income to the recipient.

This conclusion avoids the confusing treatment set out in the fact sheet. No longer does the tax treatment depend on unnamed circumstances. The rule would declare all collections to be income, and GoFundMe would be required to report all disbursements to the Service (and perhaps be subject to withholding requirements).⁷⁰ This is not only the correct theoretical application of the tax law but also leads to an administratively simpler application for the Service. The Service should revoke the fact sheet and consider all GoFundMe-type donations to be income to the recipient.

⁶⁸ See *supra* Part V.

⁶⁹ See *GoFundMe Pricing in United States*, GOFUNDME, <https://www.gofundme.com/c/pricing> [<https://perma.cc/T7FS-ACJP>].

⁷⁰ It is likely GoFundMe would be required to submit a Form 1099-MISC for payments over \$600 and could also be subject to backup withholding if the recipient did not furnish a taxpayer identification number (“TIN”). See *About Form 1099-MISC, Miscellaneous Information*, INTERNAL REVENUE SERV., www.irs.gov/forms-pubs/about-form-1099-misc [<https://perma.cc/U5BR-T97E>]; INTERNAL REVENUE SERV., FORM 1099-MISC (2025).