

Follow tax rules for love offerings

By Frank Sommerville, JD, CPA

Christ commands us to love one another. The church expresses that love, sometimes by blessing someone with a love gift. The church will receive a love offering to give it to someone in need or in appreciation of a member. The Internal Revenue Service (IRS) does not mind love gifts as long as the church follows the tax rules. This article details those rules.

Rules of giving

In all instances, the church must approve the love gift and take control of the contributions. For example, if Ms. Myway wants to bless Pastor Loving by giving him a love gift through the church, then the church should not accept that gift. Ms. Myway is controlling how the money is spent. On the other hand, if the church decides to bless Pastor Loving with a love gift, it may accept the donation from Ms. Myway. If the church controls how the money is spent, then the donation qualifies for charitable contribution credit. On the other hand, if Ms. Myway is using the church as a conduit to give a personal gift to Pastor Loving, then she does not have a tax deductible contribution, and the church has risked its tax-exempt status.

Types of love gifts

The church may give love gifts in four circumstances: (1) to meet a benevolent need, (2) to compensate a visiting minister, (3) to compensate an employee, or (4) to bless a ministry. Each type of gift has specific tax rules.

Benevolent love gifts — This type of love gift has two characteristics: (1) the recipient has a need, and (2) the recipient cannot presently meet that need. The IRS has avoided defining “need,” preferring to allow the courts to define the term. Since no court has defined it so far, churches should use the common, everyday

meaning of “need.” Generally, “need” is a synonym for “necessity.” As a result, churches should only meet needs that represent a necessity for the recipient. Most commentators believe a need should relate to food, shelter, clothing, transportation, or health care items.

Churches must document these two elements in writing. The church must confirm the need and the lack of resources. For example, if a family cannot pay the rent, the church may call the landlord and confirm the rent has not been paid. The person making the call writes a memo to the file documenting the conversation. The church then secures a written statement from someone who is knowledgeable about the family’s finances confirming that the family does not have the money to pay the rent.

Many churches find a written application helpful in documenting benevolent requests. If you e-mail me at fsommerville@nonprofitattorney.com, I will be happy to send you a sample benevolence application.

Assuming the church properly documents the factors described above, no tax reporting is required unless the recipient is an employee.

Benevolent gifts must be limited to the amount of the need. Sometimes the love offering will exceed the amount of the need. To solve this problem, the church should notify donors that any amounts received above the designated amount will be transferred to the church’s general benevolence fund.

Love gifts to visiting ministers — All love gifts to visiting ministers and missionaries are taxable and should be reported to the IRS on Form 1099-MISC, unless the church designates a portion of the payments as housing allowance. The church should not report the amount designated as housing allowance to the IRS as taxable income.

Love gifts to employees — All love gifts are taxable

to the employee, even if it meets the requirements to be a benevolent gift described above. However, this is not the end of the analysis. The church has a responsibility to ensure that an employee does not receive more than a reasonable amount of compensation through a nonbenevolent love gift. (Benevolent gifts would still need to be limited to the amount of the need.) For example, if a church took a love gift on Pastor Appreciation Sunday, and a donor placed a check for \$1 million in the gift offering, the church should not give the entire offering to the pastor because it may cause their compensation to exceed a reasonable amount. This could cause the church to lose its tax-exempt status. It could also cause the pastor to owe an intermediation sanction up to 200 percent of the amount their compensation exceeded as reasonable amount.

To solve this problem, the church should notify donors that the personnel committee (or other governing body) has set a maximum amount that will be given to the pastor from the love offering. The church should also tell the donors that if any amounts are received above the designated amount, the excess amounts will be transferred to the church's general fund.

Love gifts to another ministry — Frequently, the church will want to assist another ministry. This ministry

may be the employer of a guest speaker or missionary. At other times, the ministry will perform a charitable or religious service in the community.

The church should first determine whether the IRS recognizes the ministry as a tax-exempt organization. Before the church receives a love offering for a ministry, it must have a written confirmation of the ministry's tax-exempt status. Typically, the ministry would provide the church with a copy of its IRS determination letter. After confirming the ministry's tax-exempt status, the church may pay the ministry a love gift without any restrictions.

If the ministry is not recognized as tax-exempt or is unable to present written proof of its tax-exempt status, then the church may not give it a love gift. Instead it may only pay for services rendered. Like employees, the amount is limited to a reasonable amount for the services rendered to the church.

Frank Sommerville is a shareholder in the law firm Weycer, Kaplan, Pulaski & Zuber, P.C. in Dallas, TX, and board certified in tax law by the Texas Board of Legal Specialization. He may be reached at fsommerville@nonprofitattorney.com.



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 (817) 795-5046 Toll-free (877) 537-4360 Fax: (866) 391-7771
www.wkpz.com

Frank Sommerville is Board Certified in Tax Law by the Texas Board of Legal Specialization. Other attorneys not certified by the Texas Board of Legal Specialization unless noted Home offices: Houston and Dallas-Fort Worth, Texas.