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Reforming the Charitable Contribution Tax Deduction: Accounting for Random Acts of Charity

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REFORMING THE CHARITABLE CONTRIBUTION TAX DEDUCTION: ACCOUNTING FOR RANDOM ACTS OF CHARITY

JANENE R. FINLEY*

ABSTRACT

Concern for the tax treatment of charitable contributions has increased as a result of the Tax Cuts and Jobs Act of 2017. Although the new law increased the limitation of deductible charitable contributions to 60 percent of adjusted gross income, the standard deduction was also increased. Increasing the standard deduction is expected to reduce the number of taxpayers who are able to itemize their deductions in the next tax year, which is expected to reduce charitable giving in the future. This Article discusses proposals to amend the Internal Revenue Code to promote charitable giving, including a non-itemizer deduction. In addition, random acts of charity are explained, and consideration of those acts as charitable contributions for purposes of the charitable contribution tax deduction is proposed.

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INTRODUCTION

In 2017, approximately $410.02 billion was donated to charitable organizations in the United States.[1] Of that amount, individuals gave $286.65 billion.[2] Recently, the Tax Cuts and Jobs Act of 2017[3] brought the issue of itemized deductions to the forefront of the tax policy debate. More specifically, effects of the Tax Cuts and Jobs Act of 2017 on the charitable contribution deduction has been an issue.[4] The Tax Cuts and Jobs Act of 2017 almost doubled the standard deduction[5] for individuals while eliminating personal and dependency exemptions.[6] Since the standard deduction will increase for the 2018 tax year, it is estimated that the number of taxpayers who will be able to claim an itemized deduction for charitable contributions will be reduced from thirty-seven million in 2017 to sixteen million in 2018.[7] In addition, donations to charities are expected to drop by at least $13 billion each year as a result of the increased standard deduction.[8]

Prior to the enactment of the Tax Cuts and Jobs Act of 2017, several bills were introduced in Congress to change the charitable contribution deduction so that it would be more equitable to individual taxpayers who do not itemize deductions.[9] This Article discusses possible changes to the charitable contribution deduction

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[1] *Giving USA 2018: Americans Gave $410.02 Billion to Charity in 2017, Crossing the $400 Billion Mark for the First Time*, GIVING USA (June 12, 2018), https://givingusa.org/giving-usa-2018-americans-gave-410-02-billion-to-charity-in-2017-crossing-the-400-billion-mark-for-the-first-time/ [http://perma.cc/V3RR-YW7Z].

[2] *Id.*

[3] Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2087 (2017) (codified as amended at 26 U.S.C. § 1 (2017)).

[4] *Id.* § 11023(a).

[5] *Id.* § 11021(a).

[6] *Id.* § 11041(a)(1).

[7] LeAnn Bjerken, *Tax Law Changes Expected to Reduce Charitable Giving*, 33 J. BUS. B1, B13 (Mar. 15, 2018).

[8] *Tax Cuts and Jobs Act, H.R. 1: Nonprofit Analysis of the Final Tax Law*, NAT'L COUNS. NONPROFITS (Feb. 22, 2018), https://www.councilofnonprofits.org/sites/default/files/documents/tax-bill-summary-chart.pdf [http://perma.cc/4RVK-XXT2] [hereinafter *Tax Cuts and Jobs Act, H.R. 1*].

[9] *See, e.g.*, Vada Waters Lindsey, *The Charitable Contribution Deduction: A Historical Review and a Look to the Future*, 81 NEB. L. REV. 1056, 1071–89 (2003).

and a possible expansion of the deduction to incorporate random acts of charity into the Internal Revenue Code.

This Article proceeds as follows. A brief history of the charitable contribution tax deduction for individuals is included in Part I.[10] Part II discusses the current law for charitable contributions, including changes made by the Tax Cuts and Jobs Act of 2017.[11] Part III gives an overview of prior proposed changes to the Internal Revenue Code for charitable contribution deductions.[12] In Part IV, random acts of charity are discussed and the rationale for incorporating such acts into the Internal Revenue Code is given.[13] Part V recommends changes to the Internal Revenue Code to promote charitable giving and random acts of charity.[14] The Article concludes in the final section.[15]

I. Brief History of the Charitable Contribution Deduction for Individuals

The charitable contribution deduction has changed several times since it was first enacted in 1917 as part of the War Income Tax Revenue Act.[16] When the War Income Tax Revenue Act was passed, the charitable contribution deduction allowed individual taxpayers to claim a deduction for contributions made to "corporations or associations organized and operated exclusively for religious, charitable, scientific, or educational purposes, or to societies for the prevention of cruelty to children or animals."[17] The amount of the charitable contribution deduction was limited to 15 percent of a taxpayer's net income calculated without the charitable contribution deduction.[18] This deduction directly

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[10] *See infra* Part I.
[11] *See infra* Part II.
[12] *See infra* Part III.
[13] *See infra* Part IV.
[14] *See infra* Part V.
[15] *See infra* Conclusion.
[16] War Income Tax Revenue Act, Pub. L. No. 65-50, 40 Stat. 300, 329 (1917). *See generally* Lindsey, *supra* note 9, at 1061–70 (providing additional historical information regarding the charitable contribution tax deduction.)
[17] War Income Revenue Tax Act § 1201(2).
[18] *Id.*

reduced a taxpayer's taxable income, and thus reduced income taxes owed to the federal government.[19] The goal of enacting such a tax deduction was to encourage contributions to charitable organizations by individuals.[20]

Congress first codified tax laws by enacting the Internal Revenue Code of 1939.[21] Individuals were still able to claim a charitable contribution deduction to directly reduce taxable income under this new Code.[22] In 1944, Congress passed the Individual Income Tax Act of 1944,[23] which modified the Internal Revenue Code of 1939 and created the standard deduction.[24] As a result of this legislation, lower-income individuals were taxed to generate additional revenue for the federal government.[25] The purpose of the standard deduction was to simplify the income tax calculation for those new individual taxpayers.[26] The charitable contribution deduction was modified to be computed as a percentage of adjusted gross income rather than net income,[27] and thus was moved from a deduction that directly reduced taxable income to a deduction that may reduce taxable income. The standard deduction at that time was optional for individual taxpayers.[28] However, a married individual filing a separate tax return was not allowed to claim the standard deduction if the spouse did not claim the standard deduction.[29]

The maximum amount of charitable deduction that an individual could claim increased from 15 percent to 20 percent of

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[19] *Id.*

[20] Lindsey, *supra* note 9, at 1061.

[21] Pub. L. No. 76-1, 53 Stat. 510 (1939).

[22] I.R.C. § 23(o) (1939).

[23] *See* Individual Income Tax Act of 1944, Pub. L. No. 75-315, 58 Stat. 231 (1944).

[24] *See generally id.*

[25] Eric Smith, *A Historical Review and Prospective Modern-Day Assessment of the Non-Itemizer Charitable Contribution Deduction*, 14 ATA J. LEGAL TAX RES. 20, 26 (Spring 2016).

[26] Joseph Thorndike, *Tax History: The Love-Hate Relationship With the Standard Deduction*, TAX ANALYSTS (Mar. 27, 2014), http://www.taxhistory.org/thp/readings.nsf/ArtWeb/FD4865793851996185257D1B0041C875?OpenDocument [http://perma.cc/7GB4-RJYF].

[27] *See* Individual Income Tax Act of 1944, § 8(b).

[28] *Id.* § 9(a).

[29] I.R.C. § 25(b)(1) (1939).

adjusted gross income in 1952, and increased again in 1954 to 30 percent of adjusted gross income.[30] In addition, in 1954, the section of the IRC allowing for charitable contribution deductions was moved from section 23 to section 170.[31] Congress made a major change to the deduction's ceiling in 1964, when it created an unlimited deduction for taxpayers.[32] To qualify for the unlimited deduction, taxpayers had to contribute more than 90 percent of the taxpayer's taxable income to a charitable organization, and had to do so for eight of the ten prior taxable years.[33] The unlimited charitable contribution was quickly changed.[34] The Tax Reform Act of 1969[35] phased out the unlimited charitable contribution over a five-year period and created a maximum charitable contribution deduction for all taxpayers of 50 percent of adjusted gross income.[36]

The charitable contribution deduction remained an itemized deduction until 1981, when Congress passed the Economic Recovery Tax Act of 1981.[37] In the Economic Recovery Tax Act of 1981, Congress created a charitable contribution deduction for individuals who do not itemize deductions.[38] The deduction was not considered to be an above-the-line deduction, or a deduction for adjusted gross income.[39] Instead, it was a deduction from adjusted gross income that could be claimed on an individual's tax return in addition to the standard deduction and personal and dependency exemptions.[40] The purpose of this deduction was to encourage individuals to donate to charitable organizations after the federal government reduced spending for social services and educational programs.[41] Under the Economic Recovery Tax Act of 1981, all taxpayers who did not itemize their deductions were able to deduct up to 25 percent of their charitable contributions as a deduction in

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[30] Lindsey, *supra* note 9, at 1062–63.
[31] *Id.*
[32] *Id.* at 1064.
[33] *Id.*
[34] *Id.*
[35] Tax Reform Act of 1969, Pub. L. No. 91-172, 83 Stat. 487 (1969).
[36] Lindsey, *supra* note 9, at 1064–65.
[37] Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 172, 196 (1981).
[38] Lindsey, *supra* note 9, at 1068.
[39] *Id.* at 1069.
[40] *Id.*
[41] Smith, *supra* note 25, at 30.

addition to the standard deduction for the 1982, 1983, and 1984 tax years.[42] The amount of charitable contributions to which the percentage could apply was limited to $100 for taxpayers filing as single, married filing jointly, and head of household during the 1982 and 1983 tax years, and was limited to $300 in the 1984 tax year.[43] As a result, taxpayers were able to claim a maximum deduction of $25 in the 1982 and 1983 tax years.[44] The maximum deduction was increased to $75 in the 1984 tax year.[45] However, the amount of charitable contributions to which the percentage could apply for married individuals filing separate returns was half of the limit for other taxpayers each year.[46] Therefore, taxpayers filing separately could deduct up to 25 percent of $50 in the 1982 and 1983 tax years and 25 percent of $150 in the 1984 tax year.[47] In the 1985 tax year, taxpayers were able to deduct 50 percent of their charitable contributions, with no other limitations.[48] For the 1986 tax year, the percentage was increased to 100 percent with no limitations.[49] This law allowed individuals who did not itemize deductions to take both the standard deduction and charitable contribution deduction.[50] Those who itemized were still allowed to take the full charitable contribution deduction for all years in which the additional deduction was in effect.[51]

The additional charitable contribution deduction for taxpayers who did not itemize did not last long.[52] A "sunset provision" was included in the Economic Recovery Tax Act of 1981 in which the additional deduction would expire after 1986.[53] During 1986, Congress passed the Tax Reform Act of 1986,[54] which created the new Internal Revenue Code (IRC) of 1986.[55] The new IRC did not

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42 Economic Recovery Tax Act of 1981 § 121(a)(i)(2).

43 *Id.*

44 *Id.*

45 *Id.*

46 *Id.*

47 *Id.*

48 *Id.*

49 *Id.*

50 *Id.*

51 *Id.*

52 *Id.* § 121(a)(i)(4).

53 *Id.*

54 Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986).

55 *Id.* § 2(a) (redesignating the Code as the Internal Revenue Code of 1986).

address the charitable contribution deduction for individuals who do not itemize, and thus the additional charitable contribution deduction expired.[56] Congress allowed the additional deduction to expire because the Tax Reform Act of 1986 increased the standard deduction at that time, and the standard deduction was considered to include an amount to account for some charitable contributions.[57] In addition, it was believed that substantiating the deduction was a burden for taxpayers.[58] Therefore, the last year in which taxpayers had the benefit of an additional charitable contribution deduction was the 1986 tax year.[59]

II. CURRENT LAW

The charitable contribution deduction for individual taxpayers remains an itemized deduction today.[60] To be deductible, charitable contributions must be given to religious organizations, governmental entities, nonprofit educational organizations, nonprofit hospitals, other nonprofit organizations, and war veterans' groups.[61] Contributions to various civic leagues, certain foreign organizations, lobby groups, and political organizations do not qualify as charitable contributions.[62] In addition, contributions of money or property given directly to individuals do not qualify as charitable contributions.[63] If money is donated to a charity for the benefit of a specific individual or family, the donation is not deductible.[64] Instead, transfers of money and property from one

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[56] *See generally id.*

[57] STAFF OF JOINT COMM. ON TAXATION, 113TH CONG., PRESENT LAW AND BACKGROUND RELATING TO THE FEDERAL TAX TREATMENT OF CHARITABLE CONTRIBUTIONS 5 (Comm. Print 2013).

[58] *Id.*

[59] *Id.*

[60] I.R.C. § 170 (2012). *See* Harvey P. Dale & Roger Colinvaux, *The Charitable Contributions Deduction: Federal Tax Rules*, 68 TAX LAW. 331, 346 (2015) (providing more detailed explanation of the current rules as of the year 2015).

[61] Internal Revenue Serv., *U.S. Dep't of the Treasury, Pub. No. 526, Charitable Contributions: For Use in Preparing 2017 Returns* 3 (Mar. 12, 2018), https://www.irs.gov/pub/irs-pdf/p526.pdf [https://perma.cc/AVW7-8FAX].

[62] *Id.*

[63] *Id.*

[64] *Id.*

individual to another are considered gifts if something is not received in return.[65] Gifts are then subject to the gift tax rules.[66] For example, many individuals try to raise money for personal reasons through GoFundMe,[67] which is a social fundraising platform where individuals can donate to various causes, such as for a friend's wedding or for an individual's medical bills. This form of raising money is called "crowdfunding."[68] The website began in 2010, and since then more than 50 million donors have contributed more than $5 billion to various causes through the website.[69] Taxpayers who contribute to GoFundMe campaigns may believe that their contributions are tax deductible. However, donations to personal campaigns are considered to be gifts, while donations to certified charity campaigns are tax deductible.[70]

A. Limitations on Amount of Contribution

In addition to the types of organizations to which an individual taxpayer may donate, limitations on the amount of contributions that may be deducted are included in the IRC. Through 2017, the deductible amount of a taxpayer's charitable contribution deduction could not exceed 50 percent of the taxpayer's adjusted gross income.[71] For example, if an individual has adjusted gross income of $100,000, the total charitable contribution deduction could not exceed 50 percent of the $100,000 adjusted gross income, or $50,000. The Tax Cuts and Jobs Act of 2017 increased the overall limitation to 60 percent of a taxpayer's adjusted gross

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[65] *Frequently Asked Questions on Gift Taxes*, IRS, https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes [https://perma.cc/Z6BA-ZLTJ].

[66] Internal Revenue Serv., *Instructions for Form 709* 1–2 (2017).

[67] *About Us,* GOFUNDME, https://gofundme.com/about-us [https://perma.cc/8NKS-25CY] [hereinafter *About GoFundMe*].

[68] Brian L. Frye, *Solving Charity Failures*, 93 OR. L. REV. 155, 157 (2014).

[69] *About GoFundMe*, *supra* note 67.

[70] *Donations and Tax Deductions*, GOFUNDME, https://support.gofundme.com/hc/en-us/articles/203604684-Donations-and-Tax-Deductions [https://perma.cc/2PUX-856Q]; *See How Certified Charity Campaigns Work*, GOFUNDME, https://support.gofundme.com/hc/en-us/articles/203604054-How-do-certified-charity-campaigns-work- [https://perma.cc/2SR9-7VZE] (providing information regarding Certified Charities and GoFundMe).

[71] I.R.C. § 170(b)(1)(A) (2017).

income for tax years 2018 through 2025.[72] Therefore, an individual taxpayer with adjusted gross income of $100,000 may deduct up to $60,000 of donations as an itemized deduction under the new tax law.

There are additional limitations based on the type of property contributed and the type of charitable organization to which the donation is given. Contributions of capital gain property to certain charitable organizations, which are called "public charities"[73] or "50 [percent] Limit Organizations,"[74] are generally limited to 30 percent of the taxpayer's adjusted gross income.[75] Public charities include churches, educational organizations, hospitals, the United States, states, publicly supported charities, and certain private foundations.[76] Capital gain property is property where an individual would recognize a long-term capital gain if the individual had sold the property at its fair market value.[77] Examples of capital gain property include land and personal property that has increased in value.[78] Assets used in a business may also be treated as capital gain property for the portion of the property that would not generate ordinary income upon the sale of the asset.[79]

An example of the limitation on capital assets donated to public charities includes an individual taxpayer's donation of land not used for business purposes. If the fair market value of the land is $100,000, the maximum deductible amount is 30 percent, or $30,000. The taxpayer does not recognize any gains or losses on the contribution of the asset to the charity.[80] In addition, the taxpayer does not lose the remaining contribution.[81] Instead, the remaining $70,000 fair market value that is not currently deductible is carried forward to the next five tax years to be included in a future year's charitable contribution deduction calculation.[82]

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[72] § 170(b)(1)(G).

[73] STAFF OF JOINT COMM. ON TAXATION, *supra* note 57, at 13.

[74] Internal Revenue Serv., *supra* note 61, at 14; STAFF OF JOINT COMM. ON TAXATION, *supra* note 57, at 13.

[75] § 170(b)(1)(C)(i).

[76] Internal Revenue Serv., *supra* note 61, at 14.

[77] *Id.* at 38.

[78] *Id.*

[79] *Id.*

[80] I.R.C. § 170(b)(1)(C)(i).

[81] § 170(b)(1)(C)(ii).

[82] § 170(b)(1)(C)(ii).

When donating capital assets to a public charity, a taxpayer has the option of a reduced contribution election.[83] Under the election, a taxpayer may reduce the value of the property by any long-term capital gain that would have been realized if the property was sold.[84] The taxpayer may then deduct 50 percent of the reduced amount as a charitable contribution.[85] Assuming the taxpayer in the example above would recognize $20,000 of long-term capital gain if the land was sold, the reduced basis would be $80,000. Using the reduced basis, the taxpayer would have a $40,000 charitable contribution deduction and the remaining $40,000 would be carried forward to the next five tax years.

Cash contributions to private foundations have a 30 percent limitation.[86] Private foundations are charities that cannot be classified in any of the public charity categories and do not receive funds from public sources.[87] They include veterans' organizations, fraternal societies, nonprofit cemeteries, and private non-operating foundations.[88] Contributions of capital gain property to private foundations are generally limited to 20 percent of a taxpayer's adjusted gross income, and the value of the contribution is the reduced tax basis.[89] For the example above of donated land with a fair market value of $100,000 and a reduced tax basis of $80,000 after subtracting a $20,000 possible capital gain, the maximum deductible amount to a private foundation would be only 20 percent of $80,000, or $16,000, for the year. The remaining $64,000 that cannot be deducted in the current year may be carried forward to the next five tax years.

B. Substantiation

If an individual taxpayer is subject to an examination by the Internal Revenue Service (IRS), the taxpayer must be able to substantiate the charitable contributions claimed as a deduction

[83] § 170(b)(1)(C)(iii).
[84] *Id.*
[85] § 170(b)(1)(E)(i).
[86] § 170(b)(1)(B)(i).
[87] STAFF OF JOINT COMM. ON TAXATION, *supra* note 57, at 14.
[88] Internal Revenue Serv., *supra* note 61, at 14.
[89] I.R.C. § 170(b)(1)(D)(i).

on the tax return.[90] The amount of the charitable contribution does not matter.[91] According to the IRC, the charitable contribution deduction will not be allowed "for any contribution of a cash, check, or other monetary gift unless the donor maintains as a record of such contribution a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution."[92]

In addition, contributions in the amount of $250 or more must have a contemporaneous written acknowledgment from the donee organization.[93] This acknowledgment must include the amount of cash or a description of the property contributed.[94] However, the value of the property contributed does not have to be included.[95] The acknowledgment must also include whether the charity provided goods or services in return for the cash or property[96] and the value of those goods and services.[97]

C. Effect on Tax Returns

The number of taxpayers who are able to claim a charitable contribution deduction has remained constant since 2000.[98] Table 1 includes the total number of returns filed and the amount of adjusted gross income claimed on those returns for the years 2000 through 2016. The amounts were published by the IRS in Table 1.3 of Publication 1304 for each tax year.[99] As can be seen in the table, the total number of returns has increased from over 129 million to over 150 million during that time period.[100] In addition, the

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[90] § 170(f)(8)(A).
[91] § 170(f)(1).
[92] § 170(f)(17).
[93] § 170(f)(8)(A).
[94] § 170(f)(8)(B)(i).
[95] *Id.*
[96] § 170(f)(8)(B)(ii).
[97] § 170(f)(8)(B)(iii).
[98] *SOI Tax Stats—Individual Income Tax Returns Publication 1304 (Complete Report),* IRS (2018), https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report [https://perma.cc/3PTX-2WKQ].
[99] *Id.*
[100] *Id.*

total amount of adjusted gross income claimed on those returns has increased from over $6.3 trillion to over $10.8 trillion.[101] This information is also depicted in Figure 1 and Figure 2.

TABLE 1:
TOTAL NUMBER AND AMOUNT FOR TAX RETURNS FILED BY YEAR (NUMBER OF RETURNS IN MILLIONS; AMOUNT IN BILLIONS)[102]

Tax Year	All Returns		Total Itemized Deductions	
	Number of Returns	Adjusted Gross Income	Number of Returns	Amount
2000	129.37	$ 6,365.38	42.53	$ 822.36
2001	130.26	6,170.60	44.56	884.53
2002	130.08	6,033.59	45.65	898.05
2003	130.42	6,207.11	43.95	901.86
2004	132.23	6,788.81	46.34	998.24
2005	134.37	7,422.50	47.76	1,121.81
2006	138.39	8,030.84	49.12	1,229.24
2007	142.98	8,687.72	50.54	1,333.04
2008	142.45	8,262.86	48.17	1,322.28
2009	140.49	7,626.43	45.70	1,203.81
2010	142.89	8,089.14	46.64	1,216.67
2011	145.37	8,374.14	46.29	1,218.50
2012	144.93	9,100.13	45.58	1,238.69
2013	147.35	9,093.63	44.33	1,188.59
2014	148.61	9,771.04	43.97	1,206.71
2015	150.49	10,210.31	44.57	1,257.44
2016	150.32	10,814.73	45.04	1,220.90

Source: SOI Tax Stats—Individual Income Tax Returns Publication 1304 (Complete Report), tbl. 1.3, IRS (2018), https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report [https://perma.cc/3PTX-2WKQ].

[101] *Id.*
[102] *Id.*

TABLE 1 CONTINUED

Tax Year	Charitable Contributions: Number of Returns	Charitable Contributions: Amount
2000	37.52	$ 140.68
2001	39.39	139.24
2002	40.40	140.57
2003	38.63	145.70
2004	40.62	165.56
2005	41.38	183.39
2006	41.44	186.65
2007	41.12	193.60
2008	39.25	172.94
2009	37.24	158.02
2010	38.14	170.24
2011	37.79	174.47
2012	37.37	199.27
2013	36.43	194.66
2014	36.22	210.60
2015	36.62	221.85
2016	36.95	203.53

Source: SOI Tax Stats—Individual Income Tax Returns Publication 1304 (Complete Report), tbl. 1.3, IRS (2018), https://www.irs.gov/statistics/soi-tax-stats-individual-income-tax-returns-publication-1304-complete-report [https://perma.cc/3PTX-2WKQ].

The number of returns that claimed itemized deductions and charitable contribution deductions for the same years are listed in Table 1 and depicted in Figure 1. The lowest number of returns that claimed itemized deductions occurred in the 2000 tax year, with over 42.5 million tax returns.[103] The highest number of returns that claimed itemized deductions was over 50.5 million in the 2007 tax year.[104] The total number of returns that claimed a

[103] *Id.*
[104] *Id.*

charitable contribution ranged from 36.22 million in the 2014 tax year to 41.44 million in the 2006 tax year.[105] As can be seen in Figure 1, the number of returns filed was much greater than the number of individual tax returns that claimed both itemized deductions and charitable contributions.[106]

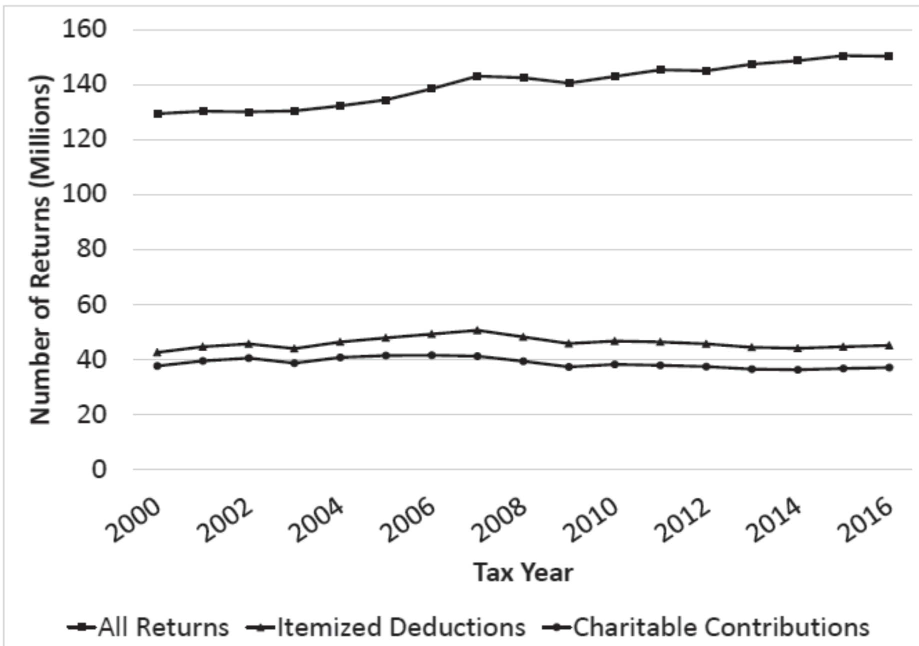

FIGURE 1: NUMBER OF TAX RETURNS FILED

Table 1 and Figure 2 show the total dollar amount of adjusted gross income,[107] the total dollar amount of itemized deductions claimed, and the total dollar amount of charitable contributions claimed each year on individual income tax returns from the tax years 2000 through 2016. The lowest total amount of itemized deductions claimed in a tax year was over $822.36 billion in 2000, with the highest at $1.33 trillion in 2007.[108] The

[105] *Id.*

[106] *Id.*

[107] In Publication 1304, the IRS uses the term "Adjusted Gross Income Less Deficit" for the amounts that appear on line 37 of Form 1040. This is commonly known as "adjusted gross income," so the common terminology is used in this Article. *See id.*

[108] *Id.*

total amount of contributions claimed ranged from $139.24 billion in the 2001 tax year to $221.85 billion in the 2015 tax year.[109] The total amount of adjusted gross income for individual income tax returns filed generally increased during the time period.[110] However, itemized deductions and charitable contributions remained somewhat constant.[111]

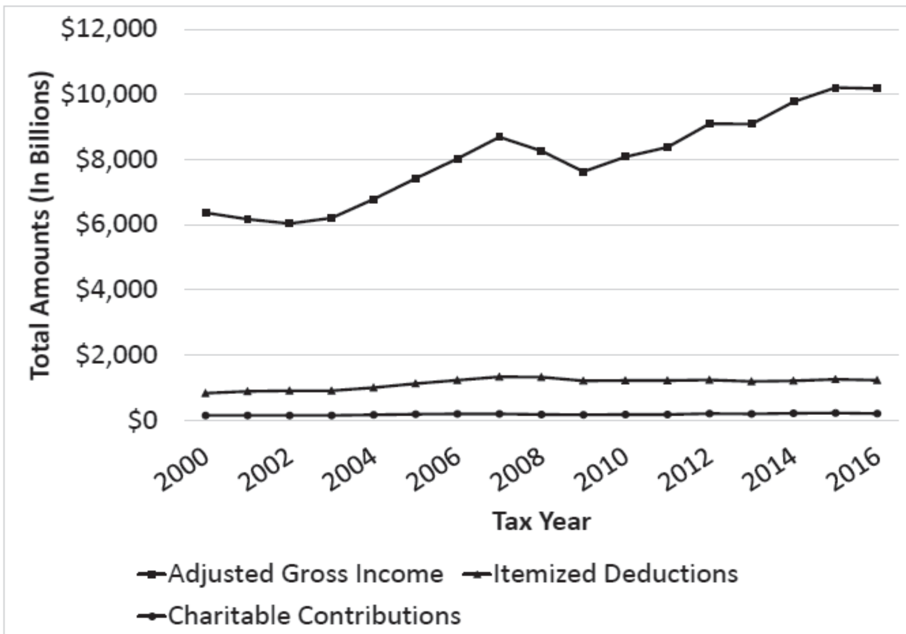

FIGURE 2: TOTAL AMOUNTS INCLUDED ON TAX RETURNS

The percentage of individual income tax returns that claimed itemized deductions and charitable contribution deductions from the 2000 to 2015 tax years is further depicted in Table 2 and is calculated using the information presented in Table 1. Approximately 30 to 35 percent of individual tax returns filed had claimed itemized deductions.[112] The remaining returns, or 65 to 70 percent, used the standard deduction.[113] As for charitable contributions, approximately 24 to 31 percent of individual tax returns filed had

[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id.*
[113] *Id.*

claimed a charitable contribution deduction.[114] These numbers show that approximately only one-third of taxpayers in the United States benefit from itemized deductions, and even fewer taxpayers benefit from the charitable contribution deduction.[115] Table 2 also indicates the amount of itemized deductions and the amount of charitable contributions as a percentage of adjusted gross income. Itemized deductions range from 12 percent to 16 percent of individual taxpayers' adjusted gross income.[116] Charitable contributions are even lower, and range between 2 percent and 3 percent of adjusted gross income.[117]

TABLE 2:
PERCENTAGE OF TOTAL RETURNS

	Itemized Deductions		Charitable Contributions	
Tax Year	Number	Dollars	Number	Dollars
2000	32.88%	12.92%	29.01%	2.21%
2001	34.21	14.33	30.24	2.26
2002	35.09	14.88	31.06	2.33
2003	33.70	14.53	29.62	2.35
2004	35.04	14.70	30.72	2.44
2005	35.54	15.11	30.80	2.47
2006	35.50	15.31	29.94	2.32
2007	35.35	15.34	28.76	2.23
2008	33.81	16.00	27.55	2.09
2009	32.53	15.78	26.51	2.07
2010	32.64	15.04	26.69	2.10
2011	31.85	14.55	26.00	2.08
2012	31.45	13.61	25.78	2.19
2013	30.08	13.07	24.72	2.14
2014	29.58	12.35	24.37	2.16
2015	29.61	12.32	24.34	2.17

114 *Id.*
115 *Id.*
116 *Id.*
117 *Id.*

Overall, the charitable contribution deduction has not benefited a large number of taxpayers over the past seventeen years.[118] However, individuals in the United States still give generously to charities. It is estimated that individuals in the United States gave $281.86 billion to charitable organizations in 2016,[119] but only $203.53 billion was claimed as charitable contributions on tax returns that year.[120] As a result, the remaining taxpayers who contributed approximately $78 billion to charities were unable to receive a tax benefit. It seems inequitable to allow some taxpayers to benefit from charitable giving while others are unable to do so. Therefore, the IRC should be amended to be more equitable to all taxpayers.

III. Prior Proposed Changes to the Charitable Contribution Deduction

In the years after the additional charitable contribution deduction expired, there have been several bills introduced in Congress to change the charitable contribution deduction, including a non-itemizer deduction and a charitable contribution tax credit.[121] This Section discusses several of those proposals and includes the advantages and disadvantages of such deductions and credits.

A. Non-Itemizer Deduction

A non-itemizer deduction reduces a taxpayer's taxable income and can be located in one of two sections of the tax return.[122] One method is to make the deduction above-the-line as a deduction

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[118] *Id.*

[119] *Giving Statistics*, CHARITY NAVIGATOR, https://web.archive.org/web/20170829212153/https://www.charitynavigator.org/index.cfm?bay=content.view&cpid=42 [https://perma.cc/K9G8-GD4M].

[120] Michael Parisi, *Individual Income Tax Returns, Preliminary Data, 2016*, STAT. INCOME BULL., 1, 7 (2018).

[121] *See, e.g.*, S. 2123, 115th Cong. (2017); H.R. 3988, 115th Cong. (2017); H.R. 1031, 105th Cong. (1997); S. 432, 105th Cong. (1997).

[122] *Some deductions are better than others*, U.S. TAX CTR., https://www.irs.com/articles/some-deductions-are-better-others [https://perma.cc/Y83P-BBKA]; *Topic Number 551—Standard Deduction*, IRS, https://www.irs.gov/taxtopics/tc551 [https://perma.cc/877S-5W4Y].

for adjusted gross income.[123] Adjusted gross income is used as a threshold for some itemized deductions, such as medical expenses.[124] Therefore, including the charitable contribution deduction as a deduction for adjusted gross income would lower the threshold for other itemized deductions. Another method is to make the charitable contribution deduction below-the-line as a deduction from adjusted gross income, but it would be in addition to the standard deduction, as was enacted by the Economic Recovery Tax Act of 1981.[125] This method would not affect the thresholds that use adjusted gross income for calculating other itemized deductions.

Members of Congress have introduced legislation to create additional deductions for charitable contributions.[126] In 1997, the Charitable Giving Relief Act[127] was introduced in the House of Representatives by Representative Philip Crane. This legislation would have created an additional charitable contribution deduction for individual taxpayers who claimed the standard deduction.[128] The amount of the additional charitable contribution deduction would be limited to 50 percent of charitable contributions over $500.[129] At the time of the proposed legislation, non-itemizers were estimated to make approximately $500 in charitable contributions each year and did not receive benefits for those contributions.[130] The legislation was expected to promote additional contributions to charity if enacted.[131] Charitable giving was estimated to increase by about $2.7 billion each year as a result of the legislation.[132] The

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[123] Sean Lowry, *Tax Deductions for Individuals: A Summary*, CONG. RES. SERV. 3 (Mar. 17, 2017), https://fas.org/sgp/crs/misc/R42872.pdf [https://perma.cc/872B-T269].

[124] Michael Marz, *Difference Between Above the Line & Below the Line Deductions*, CHRON, https://smallbusiness.chron.com/difference-between-above-line-below-line-deductions-64765.html [https://perma.cc/7LAT-NMF8].

[125] *See supra* notes 37, 42–43, 47–49 and accompanying text.

[126] *See, e.g.*, H.R. 2229, 108th Cong. (2003); H.R. 777, 107th Cong. (2001); S. 2077, 106th Cong. (2000); H.R. 1310, 106th Cong. (1999); H.R. 2499, 105th Cong. (1997).

[127] H.R. 2499, 105th Cong. (as referred to the House Ways and Means Comm., Sept. 18, 1997).

[128] *Id.*

[129] 143 CONG. REC. 19558–59 (Extensions of Remarks Sept. 18, 1997) (statement of Rep. Crane).

[130] *Id.*

[131] *Id.*

[132] *Independent sector supports Charitable Giving Relief Act*, 28 FUND RAISING MGMT.; GARDEN CITY 9, 10 (1997).

legislation was reintroduced in the House of Representatives by Representative Crane in 1999,[133] 2001,[134] and 2003.[135] It was also introduced in the Senate in 2000 by Senator Rick Santorum.[136] However, the bills were not approved by Congress.[137]

In October 2013, Senator Mike Lee introduced the Family Fairness and Opportunity Tax Reform Act.[138] This bill proposed to repeal itemized deductions and make the charitable contribution deduction a separate deduction.[139] More recently, Representative Mark Walker introduced the Universal Charitable Giving Act of 2017 in the House of Representatives, and Senator James Lankford introduced the same bill in the Senate.[140] In the Universal Charitable Giving Act of 2017, itemized deductions would not be repealed.[141] The Act would create a new charitable deduction for adjusted gross income for individuals who do not itemize.[142] The Universal Charitable Giving Act of 2017 would also limit the amount of the charitable contribution deduction to one-third of the standard deduction.[143] Representative Walker stated that the bill would increase incentives for low- and middle-income taxpayers

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[133] H.R. 1310, 106th Cong. (as referred to the House Comm. On Ways and Means, Mar. 25, 1999).

[134] H.R. 777, 107th Cong. (as referred to the House Comm. on Ways and Means, Feb. 28, 2001).

[135] H.R. 2229, 108th Cong. (as referred to the House Comm. on Ways and Means, May 22, 2003).

[136] S. 2077, 106th Cong. (as referred to the Comm. on Finance, Feb. 22, 2000).

[137] *H.R. 2229(108th): Charitable Giving Tax Relief Act*, GOVTRACK, https://www.govtrack.us/congress/bills/108/hr2229 [https://perma.cc/4BU7-T6T8]; *H.R. 777(107th): Charitable Giving Tax Relief Act*, GOVTRACK, https://www.govtrack.us/congress/bills/107/hr777 [https://perma.cc/2LGL-PVFB]; *S. 2077(106th): Charitable Giving Tax Relief Act*, GOVTRACK, https://www.govtrack.us/congress/bills/106/s2077 [https://perma.cc/4GFT-LFNB]; *H.R. 1310(106th): Charitable Giving Tax Relief Act*, GOVTRACK, https://www.govtrack.us/congress/bills/106/hr1310 [https://perma.cc/CF4C-F2BH]; *H.R. 2449(105th): Charitable Giving Tax Relief Act*, GOVTRACK, https://www.govtrack.us/congress/bills/105/hr2499 [https://perma.cc/A6YS-X9JY].

[138] S. 1616, 113th Cong. (as referred to the Comm. on Finance, Oct. 30, 2013).

[139] *Id.* § 6.

[140] S. 2123, 115th Cong. (referred to the Comm. on Finance, Nov. 14, 2017); H.R. 3988, 115th Cong. (as introduced to the H. Rep., Oct. 5, 2017).

[141] S. 2123 at § 2; H.R. 3988 at § 2.

[142] S. 2123 at § 2; H.R. 3988 at § 2.

[143] S. 2123 at § 2; H.R. 3988 at § 2.

to donate to charities, and the goal of the bill was to increase support for charities.[144] In May 2018, the Charitable Giving Tax Deduction Act was introduced in the House of Representatives by Representative Christopher Smith.[145] This legislation would change the charitable contribution deduction to be for adjusted gross income instead of an itemized deduction, and current limitations on charitable contributions included in the IRC would remain in effect.[146]

It can be argued that a non-itemizer charitable contribution deduction is not necessary in the future because the standard deduction has been increased beginning in the 2018 tax year. However, at the same time, personal and dependency exemptions have been eliminated.[147] Looking at an example for a single taxpayer, this change could affect the taxpayer's taxable income. In 2017, a taxpayer using the single filing status was able to claim a $6,350 standard deduction and a $4,050 exemption,[148] to reduce taxable income by at least $10,400 if the taxpayer did not itemize deductions. However, if the single taxpayer had more than $6,350 in itemized deductions, the taxpayer was able to reduce taxable income by a greater amount.[149] Prior to the enactment of the Tax Cuts and Jobs Act of 2017, the IRS adjusted the standard deduction based on inflation to be $6,500 for single taxpayers and the exemption amount to be $4,150.[150] This would have allowed a

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[144] 163 CONG. REC. H7959 (daily ed. Oct. 11, 2017) (statement of Rep. Walker).

[145] H.R. 5771, 115th Cong. (as referred to the Comm. on Ways and Means, May 10, 2018).

[146] Matt Hadro, *Charitable Giving Tax Deduction Act*, U.S. CONGRESSMAN CHRIS SMITH REPRESENTING N.J.'S 4TH DIST. (May 11, 2018), https://chrissmith.house.gov/news/documentsingle.aspx?DocumentID=401101 [https://perma.cc/Q4G6-BS9T]; Chris Smith, *Rep. Chris Smith: Re-energize charitable giving with an even better tax deduction*, WASH. EXAMINER (May 24, 2018), https://www.washingtonexaminer.com/opinion/op-eds/rep-chris-smith-re-energize-charitable-giving-with-an-even-better-tax-deduction [https://perma.cc/T9R8-777P].

[147] Catherine Martin, *The New Standard Deduction and Removal of Exemptions—What Does It Mean to You?*, H&R BLOCK (Apr. 9, 2018), https://www.hrblock.com/tax-center/irs/tax-reform/new-standard-deduction-eliminated-exemptions/ [https://perma.cc/PP7B-LC9L].

[148] INTERNAL REVENUE SERV., FORM 1040 at 2 (2017).

[149] *What is the standard deduction vs. itemized deduction?*, H&R BLOCK, https://www.hrblock.com/tax-center/filing/adjustments-and-deductions/standard-vs-itemized-deductions/ [https://perma.cc/836F-J8VR].

[150] *In 2018, Some Tax Benefits Increase Slightly Due to Inflation Adjustments, Others Unchanged*, IRS (Oct. 19, 2017), https://www.irs.gov/newsroom

single taxpayer to reduce taxable income by at least $10,650 if the taxpayer did not itemize deductions. Now that the Tax Cuts and Jobs Act of 2017 has passed, a single taxpayer will reduce taxable income by a standard deduction of $12,000 with no exemption for the 2018 tax year.[151] Under prior law,[152] assuming the single taxpayer has $10,000 of itemized deductions, including charitable contributions, the taxpayer would have been able to reduce taxable income by both itemized deductions and the personal exemption, resulting in a reduction of taxable income by $14,150 in the 2018 tax year. Although the new standard deduction is greater than the total of the prior standard deduction and exemption, the taxpayer has a greater threshold to overcome to itemize deductions, and the taxpayer has no exemption.[153] Therefore, in the 2018 tax year, the taxpayer will reduce taxable income by only $12,000 under the new tax law instead of $14,150.

For a married couple filing a joint return, the threshold to itemize is even greater.[154] Under prior law, the standard deduction for those married filing jointly was $12,700 in the 2017 tax year,[155] and was adjusted for inflation by the IRS to $13,000 for the 2018 tax year.[156] However, the standard deduction was increased to $24,000 for the 2018 tax year under the Tax Cuts and Jobs Act of 2017.[157] Under prior law,[158] a married couple with no itemized deductions would be able to reduce taxable income by both the standard deduction and two exemptions in the 2018 tax year, for a total reduction of $21,300. Under the Tax Cuts and Jobs Act

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/in-2018-some-tax-benefits-increase-slightly-due-to-inflation-adjustments-others-unchanged [https://perma.cc/55KE-F8BM] [hereinafter *Some Tax Benefits Increase Slightly*].

[151] *See Tax Cuts and Jobs Act, H.R. 1*, *supra* note 8.

[152] I.R.C. § 170 (2012); Dale & Colinvaux, *supra* note 60, at 346–47.

[153] Kathy Pickering, *3 Changes to Itemized Deductions Under Tax Reform Bill*, H&R BLOCK (Dec. 22, 2017), https://www.hrblock.com/tax-center/irs/tax-reform/3-changes-itemized-deductions-tax-reform-bill/ [https://perma.cc/9PR4-KH7W].

[154] *2018 Tax Cuts & Jobs Act Overview*, SMITH & HOWARD (Mar. 2018), https://www.smith-howard.com/2018-tax-cuts-jobs-act-overview/ [https://perma.cc /H56H-9L3C].

[155] *See* INTERNAL REVENUE SERV., FORM 1040 at 2 (2017).

[156] *See Some Tax Benefits Increase Slightly*, *supra* note 150.

[157] *See* Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97, 131 Stat. 2087 (2017) (codified as amended at 26 U.S.C. § 1 (2017)).

[158] I.R.C. § 170 (2017); *see Some Tax Benefits Increase Slightly*, *supra* note 150.

of 2017, a married couple will claim a $24,000 standard deduction with no exemptions.[159] Assuming a couple has $20,000 of itemized deductions, including charitable contributions, the taxpayers would have been able to reduce taxable income in the 2018 tax year by $28,200. However, under the new law, the couple could only claim the $24,000 standard deduction in the 2018 tax year.

B. Tax Credit

A tax credit differs from a tax deduction in that a tax credit directly reduces a tax liability rather than reducing taxable income.[160] A tax credit may be refundable or non-refundable.[161] Non-refundable tax credits reduce an individual taxpayer's liability to $0, but do not result in a refund.[162] Refundable tax credits allow for a refund if the amount of the credit is greater than the tax liability.[163] Although most tax reform proposals involving charitable contributions include a tax deduction, a tax credit is also an option to encourage charitable giving by individual taxpayers.[164]

An example of a tax credit for charitable contributions is the American Community Renewal Act of 1997,[165] which was introduced by Senator Spencer Abraham in the Senate and by Representative J.C. Watts in the House of Representatives. Among other provisions, the American Community Renewal Act of 1997 would have created a tax credit of 75 percent of the contribution to a charitable organization.[166] The maximum amount of the credit would be $100 each year.[167] However, the taxpayer would be required to provide more than ten hours of volunteer service for the charity to receive the tax credit.[168]

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[159] *See 2018 Tax Cuts & Jobs Act Overview*, *supra* note 154.

[160] *Credits & Deductions for Individuals*, IRS, https://www.irs.gov/credits-deductions-for-individuals [https://perma.cc/UNY4-42W8].

[161] *Id.*

[162] *Id.*

[163] *Id.*

[164] Bob Enders, *Tax Incentives: An Economic Basis for Charitable Giving*, LEARNING TO GIVE, https://www.learningtogive.org/resources/tax-incentives-economic-basis-charitable-giving [https://perma.cc/SJ8B-H34V].

[165] S. 432, 105th Cong. (as referred to the S. Comm. on Finance, Mar. 12, 1997); H.R. 1031, 105th Cong. (as referred to the S. Comm. on Housing and Community Opportunity, Mar. 12, 1997).

[166] *See* S. 432 § 211; H.R. 1031 § 211.

[167] S. 432 § 211; H.R. 1031 § 211.

[168] S. 432 § 211; H.R. 1031 § 211.

IV. INCORPORATING RANDOM ACTS OF CHARITY

For the past several years, the media has profiled and promoted the acts of kindness given from one individual to another.[169] Examples of random acts of kindness are profiled regularly on television and Internet news sources.[170] These random acts have ranged from a stranger paying for another individual's groceries[171] to building ramps for disabled individuals.[172] The idea of promoting random acts of kindness is so popular that the National Random Acts of Kindness Day is celebrated on February seventeenth each year in the United States,[173] and Random Act of Kindness Week is celebrated each February.[174] Websites have included examples of random acts of kindness that individuals may perform for others.[175] Suggestions include buying coffee for another person in line, giving compliments to others, and leaving positive notes in various places for strangers.[176] Although the term "random acts of kindness" is commonly used for charitable acts from one individual to another,

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[169] *See, e.g.*, Eva Wiseman, *The Cult of Being Kind*, GUARDIAN (Apr. 1, 2018, 2:00 PM), https://www.theguardian.com/lifeandstyle/2018/apr/01/the-cult-of-being-kind [https://perma.cc/QDX9-G8NK].

[170] *Id.*

[171] *See* Aaron Young, *When a woman couldn't pay for her groceries, a stranger stepped in*, USA TODAY (Apr. 26, 2017, 6:56 PM), https://www.usatoday.com/story/news/humankind/2017/04/26/when-woman-couldnt-pay-her-groceries-stranger-stepped/100953612/ [https://perma.cc/7T6W-TR3T]; *Stranger pays woman's grocery bill, dies in car crash hours later*, N.Y. POST (Dec. 1, 2015, 9:05 AM), https://nypost.com/2015/12/01/stranger-pays-womans-grocery-bill-dies-in-car-crash-hours-later/ [https://perma.cc/TX4E-4BRV].

[172] *See Man Helps Amputee Up Stairs, Then Returns to Build Ramp*, ABC7 (Apr. 5, 2017), http://abc7chicago.com/society/man-helps-amputee-up-stairs-then-returns-to-build-ramp/1839960/ [https://perma.cc/32U5-6TLL].

[173] *National Random Acts of Kindness Day—February 17*, NAT'L DAY CALENDAR, https://nationaldaycalendar.com/national-random-acts-of-kindness-day-february-17/ [https://perma.cc/K29L-6GS3].

[174] Solana Salado, *Celebrate Random Acts of Kindness Week With Our Favorite Quotes on Kindness*, PARADE (Feb. 13, 2017, 1:30 PM), https://parade.com/547144/solanahawkenson/celebrate-random-acts-of-kindness-week-with-our-favorite-quotes-on-kindness/ [https://perma.cc/8RC2-9FXP].

[175] *50 Kindness Ideas For Random Acts Of Kindness Day*, RANDOM ACTS OF KINDNESS (Feb. 16, 2017), https://www.randomactsofkindness.org/the-kindness-blog/2943-50-kindness-ideas-for-random-acts-of-kindness-day [https://perma.cc/3N7D-DRUL].

[176] *Id.*

this Article uses the term "random acts of charity" to equate the charitable act with the charitable contribution deduction.

Currently, random acts of charity from one individual to another are considered gifts, which makes them subject to the gift tax rules.[177] However, random acts of charity should be considered qualified deductions for charitable purposes and incorporated into the charitable contribution tax deduction for several reasons.

First, although many charitable organizations provide help for food, clothing, medical care, and shelter to individuals and families, charities may be unable to meet the immediate needs of some individuals.[178] For example, it would be difficult to find a charity to purchase groceries for an individual who could not pay while the individual is at the grocery store. It would also be difficult to find a charity to build a ramp for another individual immediately after the person moves back into his or her home. Charities need time to evaluate need, gather resources, and organize volunteers to help meet the needs of individuals.

A second reason why random acts of charity should be classified as donations for purposes of the charitable contribution tax deduction is that charities cannot be relied upon to meet the needs of specific individuals.[179] As discussed above, an individual cannot donate money or property to a charity for the benefit of a specific individual for purposes of the charitable contribution deduction.[180] Therefore, there is no guarantee that a specific individual or family will be helped by any donation to a charitable organization.

Third, charities use some of the money donated to pay for administrative fees and other expenses.[181] Table 3 lists the revenues and expenses of six major charities that operate within in the United States. Some charities are formed to conduct research and

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[177] *See Frequently Asked Questions on Gift Taxes, supra* note 65.

[178] Jon McNamara, *Charities and Organizations That Can Help With Paying Bills*, NEED HELP PAYING BILLS, https://www.needhelppayingbills.com/html/charities_and_organizations_th.html [https://perma.cc/JA6G-KK8Q].

[179] *May We Make Grants to Individual Members?*, NONPROFIT ISSUES (May 15, 2012), https://www.nonprofitissues.com/to-the-point/may-we-make-grants-individual-members [https://perma.cc/FUM6-GNS4].

[180] *See supra* text accompanying notes 63–66.

[181] *See generally* Greg Emerson, *Charities With the Highest Admin Costs*, THESTREET (June 1, 2010, 7:00 AM), https://www.thestreet.com/story/12806198/1/20-worst-charities-america.html [http://perma.cc/LS2E-VWXE].

provide other services to individuals, so those types of charities were not included in Table 3. For example, the American Cancer Society primarily conducts cancer research,[182] and St. Jude Children's Research Hospital conducts cancer research and provides medical services to children.[183] Therefore, donations collected by those charities are necessary to pay for salaries and other administrative fees to provide necessary services.[184] However, other organizations collect donations to provide food, clothing, shelter, and other necessities to individuals in need.[185] The charities included in Table 3 are known for providing such help.

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[182] *About the American Cancer Society*, AM. CANCER SOC'Y, https://www.cancer.org/about-us.html [http://perma.cc/64Y6-FBJC].

[183] *About Us*, ST. JUDE CHILD. RES. HOSP., https://www.stjude.org/about-st-jude.html?sc_icid=us-mm-missionstatement#mission.

[184] *See infra* Table 3.

[185] According to the mission of the American Red Cross, the organization "prevents and alleviates human suffering in the face of emergencies by mobilizing the power of volunteers and the generosity of donors." *Mission & Values*, AM. RED CROSS, http://www.redcross.org/about-us/who-we-are/mission-and-values [http://perma.cc/9BP9-YTXA]. In addition to providing services, such as overnight shelter stays and mental health services, the Red Cross reports that it serves food and provides relief items during disasters. *Id.* The mission of Feeding America is "to feed America's hungry through a nationwide network of member food banks and engage our country in the fight to end hunger." *About Us*, FEEDING AM., http://www.feedingamerica.org/about-us/ [http://perma.cc/4QPL-4Z4X]. Habitat for Humanity helps to provide housing to individuals and families. *About Habitat for Humanity*, HABITAT FOR HUMAN., https://www.habitat.org/about [http://perma.cc/V248-K6L6]. In addition to home construction, Habitat for Humanity helps to revitalize neighborhoods and provide shelter during disasters. *Our Work*, HABITAT FOR HUMAN., https://www.habitat.org/impact/our-work [http://perma.cc/QV6V-NYQZ]. Heifer Project International has "provided resources and training for struggling small-scale farmers in order to give them a chance to change their circumstances." *Our Work Around The World*, HEIFER INT'L, https://www.heifer.org/ending-hunger/our-work/index.html [http://perma.cc/7PHP-TAER]. The mission of the Salvation Army World Service Office is to "preach the gospel of Jesus Christ and to meet human needs in His name without discrimination." *About Us*, SALVATION ARMY WORLD SERV. OFF., https://www.sawso.org/sawso/about [http://perma.cc/JP9L-MAX8]. The Salvation Army Worldwide Service Office helps to prevent human trafficking, responds to disasters, and supports community health. *Ways We Help*, SALVATION ARMY WORLD SERV. OFF., https://www.sawso.org/sawso/ways_we_help [http://perma.cc/7MHV-GF58]. The United Way Worldwide's mission is to improve "lives by mobilizing the caring power of communities around the world to advance the common good." *Our Mission*, UNITED WAY, https://www.unitedway.org/our-impact/mission [http://perma.cc/GY97-UNTZ]. A few of the United Way's programs include a program to help prepare children for school, a confidential hotline for health and

The information listed in Table 3 is from the most recent Form 990s filed by the organizations[186] and posted by GuideStar, which is an organization that gathers information about non-profit organizations in the United States.[187] On Form 990, donations given to charities are included as a separate revenue under Contributions and Grants.[188] Grants and Similar Amounts Paid include grants given to other domestic or foreign organizations plus grants and other assistance for domestic and foreign individuals.[189] Other expenses include such items as management, accounting and lobbying fees, advertising, office expenses, travel, conferences, and interest.[190]

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human services, and free tax preparation programs. *Featured Programs*, UNITED WAY, https://www.unitedway.org/our-impact/featured-programs [http://perma.cc/D5QJ-ZWJY].

[186] *Return of Organization Exempt From Income Tax, 2016 Form 990: American National Red Cross & Its Constituent Chapters and Branches*, GUIDESTAR (Nov. 15, 2017), https://www.guidestar.org/FinDocuments/2017/530/196/2017-530196605-0ebf4086-9.pdf [http://perma.cc/9G53-97A9] [hereinafter *American National Red Cross 2016 Form 990*]; *Return of Organization Exempt From Income Tax, 2016 Form 990: Feeding America*, GUIDESTAR (Feb. 21, 2018), https://www.guidestar.org/FinDocuments/2017/363/673/2017-363673599-0ef401d7-9.pdf [http://perma.cc/JJ9G-2MM3] [hereinafter *Feeding America 2016 Form 990*]; *Return of Organization Exempt From Income Tax, 2016 Form 990: Habitat for Humanity International Inc.*, GUIDESTAR (Nov. 17, 2017), https://www.guidestar.org/FinDocuments/2017/911/914/2017-911914868-0ec56b2c-9.pdf [http://perma.cc/UB2T-Q5SM] [hereinafter *Habitat for Humanity 2016 Form 990*]; *Return of Organization Exempt From Income Tax, 2016 Form 990: Heifer Project International*, GUIDESTAR (Nov. 13, 2017), https://www.guidestar.org/FinDocuments/2017/351/019/2017-351019477-0eaf1428-9.pdf [http://perma.cc/VDB4-4RTR] [hereinafter *Heifer International 2016 Form 990*]; *Return of Organization Exempt From Income Tax, 2015 Form 990: The Salvation Army World Service Office*, GUIDESTAR (Aug. 11, 2017), https://www.guidestar.org/FinDocuments/2016/132/923/2016-132923701-0e6c3dc9-9.pdf [http://perma.cc/E5RV-8954] [hereinafter *Salvation Army 2015 Form 990*]; *Return of Organization Exempt From Income Tax, 2016 Form 990: United Way Worldwide*, GUIDESTAR (Sept. 19, 2017), https://www.guidestar.org/FinDocuments/2016/131/635/2016-131635294-0ed42322-9.pdf [http://perma.cc/WFGB-AH5Y] [hereinafter *United Way 2016 Form 990*].

[187] *Hi! We're GuideStar*, GUIDESTAR, https://learn.guidestar.org/about-us [http://perma.cc/t9k5-24WS].

[188] INTERNAL REVENUE SERV., FORM 990 at 1 (2017).

[189] *Id.* at 10, 11.

[190] *Id.* at 10.

TABLE 3:
REVENUES AND EXPENSES OF SELECTED CHARITIES FROM FORM 990

Organization	American Red Cross	Feeding America	Habitat for Humanity
Tax Year	2016	2016	2016
Revenues:			
Contributions and Grants	$ 700,040,441	$2,654,090,409	$213,744,488
Program Service Revenue	1,845,547,694	22,773,762	28,469,309
Investment Income	99,782,486	1,026,747	2,858,461
Other Revenue	30,666,495	39,236,142	5,163,334
Total Revenue	2,676,037,116	2,717,127,060	250,235,592
Expenses:			
Grants and Similar Amounts Paid	156,909,995	2,599,885,416	107,532,556
Benefits Paid to or for Members	0	0	0
Salaries, Other Compensation, Employee Benefits	1,534,333,942	31,782,495	72,502,359
Professional Fundraising Fees	0	2,974,136	7,510,929
Other Expenses	1,117,386,976	50,178,674	59,726,441
Total Expenses	2,808,630,913	2,684,820,721	247,272,285
Revenue Less Expenses	(132,593,797)	32,306,339	2,963,307
Percentage of Total Revenues:			
Salaries, Other Compensation, Employee Benefits	57.34%	1.17%	28.97%
Professional Fundraising Fees	0.00%	0.11%	3.00%
Other Expenses	41.76%	1.85%	23.87%

Source: Data from Form 990s filed by charities and posted by GuideStar. *See supra* note 186 and accompanying text.

TABLE 3 CONTINUED

Organization	Heifer Project International	Salvation Army World Service Office	United Way Worldwide
Tax Year	2016	2015	2016
Revenues:			
Contributions and Grants	$ 115,659,808	$ 17,690,530	$ 69,697,401
Program Service Revenue	1,309,435	0	38,176,898
Investment Income	(7,694)	4,208,324	469,394
Other Revenue	1,198,687	0	936,363
Total Revenue	118,160,236	21,898,854	109,280,056
Expenses:			
Grants and Similar Amounts Paid	51,804,188	15,360,284	61,700,713
Benefits Paid to or for Members	0	0	0
Salaries, Other Compensation, Employee Benefits	22,343,976	2,416,358	28,571,002
Professional Fundraising Fees	3,693,923	0	0
Other Expenses	37,135,437	5,864,093	27,620,588
Total Expenses	114,977,524	23,640,735	117,892,303
Revenue Less Expenses	3,182,712	(1,741,881)	(8,612,247)
Percentage of Total Revenues:			
Salaries, Other Compensation, Employee Benefits	18.91%	11.03%	26.14%
Professional Fundraising Fees	3.13%	0.00%	0.00%
Other Expenses	31.43%	26.78%	25.28%

Source: Data from Form 990s filed by charities and posted by GuideStar. *See supra* note 186 and accompanying text.

As can be seen in Table 3, administrative fees and other expenses vary greatly between charities. The American Red Cross collected over $2.6 billion in revenues during the 2016 tax year.[191] Of that amount, 57.34 percent was used to pay compensation for employees and 41.76 percent was used for other expenses, for a total of 99.1 percent spent on expenses.[192] The organization did pay almost $157 million in grants and other amounts directly for individuals, but had more expenses than revenues during the year.[193] Feeding America collected over $2.7 billion in revenues during the 2016 tax year and spent only 1.17 percent on employee compensation and 1.85 percent on other operating expenses.[194] Habitat for Humanity spent 28.97 percent of its $250 million in revenues during the 2016 tax year on employee salaries and benefits, spent 3 percent on professional fundraising fees, and spent almost 27 percent of its revenues on other expenses.[195] Heifer Project International received over $118 million in revenues for the 2016 tax year.[196] The organization spent 18.91 percent on employee benefits and fees, 3.13 percent on professional fundraising fees, and 31.43 percent on other expenses.[197] The Salvation Army spent only 11.03 percent of almost $22 million in revenues on employee expenses in the 2015 tax year, and 26.78 percent on other expenses.[198] Finally, the United Way Worldwide collected over $109 million in revenues in the 2016 tax year.[199] The organization spent 26.14 percent of the revenues on employee expenses and 25.28 percent on other expenses.[200] Of the charities listed in Table 3, all but Feeding America and the Salvation Army spent over half of the revenues collected on salaries and other operating expenses.[201]

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[191] *See American National Red Cross 2016 Form 990*, *supra* note 186.

[192] *See supra* Table 3.

[193] *See Feeding America 2016 Form 990*, *supra* note 186.

[194] *Id.*; *see supra* Table 3.

[195] *See Habitat for Humanity 2016 Form 990*, *supra* note 186; *see also supra* Table 3.

[196] *See Heifer International 2016 Form 990*, *supra* note 186.

[197] *Id.*; *see supra* Table 3.

[198] *See Salvation Army 2015 Form 990*, *supra* note 186; *see also supra* Table 3.

[199] *See United Way 2016 Form 990*, *supra* note 186.

[200] *Id.*; *see supra* Table 3.

[201] *See supra* Table 3.

A fourth reason why random acts of charity should be incorporated into the charitable contribution tax deduction is that cases of fraud and mismanagement within some charities have occurred.[202] Therefore, it is difficult to assure that all of the donated money will go to the intended purpose. For example, the American Red Cross was involved in a controversy regarding donations for its relief efforts for the earthquake in Haiti in 2010.[203] The American Red Cross received donations of approximately $487 million for its Haiti Assistance Project.[204] The American Red Cross was able to provide some relief for the Haitian people by providing food rations for more than one million individuals and by building temporary shelters for displaced individuals and families.[205] However, approximately 25 percent of the amount collected for the Haiti Assistance Project was spent on management expenses, general expenses, fundraising, program costs, and a contingency fund.[206]

A final reason why random acts of charity should be classified as charitable contributions for purposes of the charitable contribution tax deduction is that the concept of allowing charitable contribution deductions for purposes of helping a specific individual is not a novel concept.[207] For example, in 2015, Congress passed and President Barack Obama signed into law the Slain

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[202] Rebecca R. Ruiz, *4 Cancer Charities Are Accused of Fraud*, N.Y. TIMES (May 19, 2015), https://www.nytimes.com/2015/05/20/business/4-cancer-charities-accused-in-ftc-fraud-case.html [http://perma.cc/8AQ9-WX9K].

[203] Laura Sullivan, *In Search of The Red Cross' $500 Million in Haiti Relief*, NAT'L PUB. RADIO, INC. (June 3, 2015, 4:36 PM), https://www.npr.org/2015/06/03/411524156/in-search-of-the-red-cross-500-million-in-haiti-relief [http://perma.cc/RBQ5-R3B3].

[204] Senator Charles Grassley, *Memorandum to Members of the Senate Judiciary and Finance Committee* 1 (June 15, 2016), https://www.grassley.senate.gov/sites/default/files/constituents/2016-06-15%20Senator%20Grassley%20Red%20Cross%20Inquiry.pdf [http://perma.cc/GKG3-B4X9].

[205] *Id.*

[206] *Grassley Releases Memo on Red Cross' Haiti Earthquake Relief Response, Finds Red Cross Does Not Know How Much Each Project Cost, Spent Significant Amount of Donor Funds on Program Management, Other Internal Expenses*, CHUCK GRASSLEY: U.S. SEN. FOR IOWA (June 16, 2016), https://www.grassley.senate.gov/news/news-releases/grassley-releases-memo-red-cross%E2%80%99-haiti-earthquake-relief-response-finds-red [http://perma.cc/FR28-FTNX].

[207] *Gifts that May Not Qualify as Contributions*, EVANGELICAL COUNCIL FOR FIN. ACCOUNTABILITY, http://www.ecfa.org/Content/CharitableGivingGiftsThatMayNotQualify [http://perma.cc/6LW4-NJQN].

Officer Family Support Act of 2015.[208] According to the Act, contributions made for the benefit of the spouse and dependents of two New York Police Department detectives were considered to be charitable contributions even though the contributions were for the exclusive benefit of those families.[209] In addition, The American Community Renewal Act of 1999[210] was introduced in both the House of Representatives and the Senate. This Act would have created family development accounts, where individuals could contribute money on behalf of another individual who lives in a designated renewal community.[211] These deductions for contributions on behalf of another individual would have been limited to $1,000 each year under the American Community Renewal Act of 1999.[212]

An argument against a deduction for random acts of charity is that the Federal Government needs revenues. The Tax Foundation had predicted that federal revenue collected over a ten-year period from 2017 to 2026 would decrease by $191 billion if the charitable contribution deduction became a deduction for adjusted gross income when using the law in effect for the 2017 tax year.[213] The organization also predicted that federal revenues would decrease by $515 billion using an above-the-line deduction under the Tax Cuts and Jobs Act of 2017.[214] Including random acts of charity as charitable contributions for purposes of the deduction would also reduce federal revenues because any allowable deduction will reduce taxable income, thus reducing the amount of tax collected. However, the needs of the government for tax revenues is never satisfied, and the government's needs should never outweigh the needs of humanity.

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[208] Slain Officer Family Support Act of 2015, Pub. L. No. 114-7, 129 Stat. 83 (2015).

[209] *Id.*; *see also President Obama Signs Slain Officer Family Support Act of 2015 Into Law*, U.S. CONG. HAKEEM JEFFRIES (Apr. 1, 2015), https://Jeffries.house.gov/media-center/press-releases/president-obama-signs-slain-officer-family-support-act-of-2015-into-law [http://perma.cc/LZK7-WHGV].

[210] S. 463, 106th Cong. (as referred to the S. Comm. on Finance, Feb. 24, 1999); H.R. 815, 106th Cong. (as referred to the S. Comm. on Financial Institutions and Consumer Credit, Mar. 18, 1997).

[211] *See* S. 463 § 101.

[212] *Id.*

[213] Scott Greenberg, *The Effects of Making the Charitable Deduction Above-The-Line*, TAX FOUND. (July 31, 2017), https://taxfoundation.org/the-effects-of-making-the-charitable-deduction-above-the-line/ [http://perma.cc/XK44-VFAX].

[214] *Id.*

If a taxpayer were able to purchase goods and services for an individual in need and give the goods and services directly to the individual, 100 percent of the payment would go directly to the need. Providing goods and services directly to another individual would assure that cases of fraud and mismanagement in charitable organizations would not occur. In addition, the need would be met immediately. Therefore, random acts of charity should be considered charitable contributions for purposes of the charitable contribution tax deduction.

V. Proposed Changes to the Internal Revenue Code

The IRC should be amended to encourage charitable giving, to provide support for individuals in need, and to become equitable for all taxpayers. The first change that should be made is to create a non-itemizer deduction similar to that which was enacted in the Economic Recovery Tax Act of 1981.[215] A taxpayer should be able to either itemize deductions or take the standard deduction plus an additional charitable contribution deduction. During the tax years from 1982 through 1984, the deduction was limited by both a cap on the amount of contributions and by a percentage.[216] Therefore, the allowable deduction was rather small. However, in the 1985 tax year, the deduction was increased to 50 percent of charitable contributions, and the limitation was lifted in the 1986 tax year.[217] Since it has been argued that a portion of the standard deduction accounts for charitable contributions,[218] there may be a limit on the amount of additional charitable contribution that may be deducted, as was the tax law from 1982 through 1984.[219] However, a low cap and percentage limitation do not create much of an incentive for individuals to give.[220] Therefore, the additional contribution deduction should be set at no less than 50 percent of

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[215] *See* Economic Recovery Tax Act of 1981, Pub. L. No. 97-34, 95 Stat. 196 (1981).

[216] *See id.*

[217] *See id.*

[218] *See* Staff of Joint Comm. on Taxation, 113th Cong., Present Law and Background Relating to the Federal Tax Treatment of Charitable Contributions 5 (Comm. Print 2013).

[219] Economic Recovery Tax Act of 1981 § 121(a)(3).

[220] *The Tax Policy Center's Briefing Book: Key Elements of the U.S. Tax System*, Tax Pol'y Ctr., https://www.taxpolicycenter.org/briefing-book/how-might-tax-reforms-reduce-incentives-charitable-giving [http://perma.cc/ASRN-6M29].

charitable contributions, as was the tax law for the 1985 tax year.[221] If individual taxpayers itemize their deductions, they would still be able to take the full deduction as described in the IRC.

Another change that should be made to encourage support for individuals in need is to allow for random acts of charity to be considered charitable contributions for purposes of the charitable contribution tax deduction. This would increase the possibility for individuals to take a non-itemizer charitable contribution deduction and increase the possibility for individuals to take a full itemized deduction. To ensure that this type of deduction is not abused, requirements must be enacted to provide limitations on what acts of charity would qualify for purposes of the charitable contribution tax deduction.

The first requirement should be a limit on the type of expenditure that would qualify as an act of charity. Charities are able to trace how cash is used to benefit individuals.[222] However, it is difficult to assure that cash given directly to an individual will be used for the intended purpose. For example, if cash is given to an individual to buy food, the individual may use the cash for entertainment purposes, such as for a vacation. To qualify as a random act of charity, a taxpayer must be required to purchase the necessary items or pay for the need directly. Therefore, cash given from a taxpayer to another individual would not qualify as an act of charity. Expenses that qualify can be easily identified using standards already in place by charitable or governmental organizations.[223] If a qualified charity would be allowed to pay for an expenditure, the expenditure would qualify as a random act of charity. For example, many charities pay for food, clothing, utilities, rent, medical care, and other living expenses for low-income individuals and families.[224] Therefore, payments for those types of expenditures would qualify as random acts of charity.

A second requirement for a random act of charity to qualify for purposes of the charitable contribution tax deduction is substantiation. As is required for a donation to a charity, a taxpayer must substantiate the deduction with a written record of the

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[221] *See* Economic Recovery Tax Act of 1981 § 121(a)(2).

[222] *See generally* Erin Lowry, *How to know if your charitable contributions are going to the right place*, TAXACT BLOG, https://blog.taxact.com/know-your-charitable-contributions/ [http://perma.cc/9272-AQMF].

[223] *See generally* Internal Revenue Serv., *supra* note 61.

[224] *See, e.g.*, McNamara, *supra* note 178.

donation.[225] If a taxpayer purchases an item or pays other expenses for a qualified recipient, the taxpayer must obtain a receipt for the purchase. The taxpayer must also keep a contemporaneous record of the name of the recipient and the date of the act of charity to meet the substantiation requirement.

Third, there must be a limit as to the income level of the recipient of a random act of charity. The recipient of the act of charity must be at or below the poverty level. It may be difficult to determine whether the recipient is low-income. However, a taxpayer must have a reasonable belief that the recipient is at or below the poverty level for the expenditure to qualify for purposes of the charitable contribution tax deduction. In addition, the taxpayer must keep a contemporaneous record of the circumstances indicating why the taxpayer believes the income level of the recipient is at or below the poverty level.

A final requirement for the random act of charity to qualify for purposes of the tax deduction is that the recipient must not be related to the taxpayer. The IRC defines a taxpayer's relatives under the dependency rules.[226] Relatives under the dependency rules include the taxpayer's children, grandchildren, brothers, sisters, parents, grandparents, aunts, and uncles.[227] Since those individuals are related according to the IRC, they would not qualify to be recipients of random acts of charity. All other individuals would qualify as eligible recipients.

CONCLUSION

The charitable contribution deduction has changed multiple times in the past,[228] and there have been several attempts in Congress to amend the IRC in an effort to create a more equitable deduction for charitable contributions.[229] Proposed changes include non-itemizer deductions and tax credits for charitable

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[225] *See supra* notes 92–97 and accompanying text.

[226] I.R.C. § 152 (2017).

[227] *Id.* § 152(d)(2).

[228] *See supra* text accompanying note 16; *see generally* Lindsey, *supra* note 9, at 1061–70.

[229] *See e.g.*, H.R. 2229, 108th Cong. (2003); H.R. 777, 107th Cong. (2001); S. 2077, 106th Cong. (2000); H.R. 1310, 106th Cong. (1999); H.R. 2499, 105th Cong. (1997).

contributions.[230] For a brief time, a non-itemizer deduction was allowed for charitable contribution deductions.[231] Although the Tax Cuts and Jobs Act of 2017 has increased the maximum allowable charitable contribution deduction for purposes of itemizing deductions, the standard deduction has also increased.[232] This is expected to reduce the amount of charitable giving in the future.[233] In addition, charities may not be able to meet the immediate needs of some individuals, and donations to charities cannot be used to benefit specific individuals.[234] Charities use some revenues to pay for administrative fees and other expenses, and cases of fraud and mismanagement within some charitable organizations have occurred.[235] Also, the charitable contribution deduction has previously been used to promote giving to specific individuals.[236] Random acts of charity are currently considered gifts and are not qualified charitable contributions.[237] Therefore, the IRC should be amended to allow non-itemizers to claim a tax deduction for charitable contributions, and random acts of charity should be included as charitable donations for purposes of the charitable contribution tax deduction.

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[230] *See supra* text accompanying note 130.

[231] *See id.*

[232] *See* Tax Cut and Jobs Act of 2017, Pub. L. 115-97, 131 Stat. 2087 (2017) (codified as amended at 26 U.S.C. § 1 (2017)).

[233] *See* Bjerken, *supra* note 7, at B13.

[234] *See supra* text accompanying notes 177–80.

[235] *See* Emerson, *supra* note 181; Ruiz, *supra* note 202.

[236] *See supra* text accompanying notes 208–13.

[237] *See supra* text accompanying notes 63–66.