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Comments

The Deductibility of Fixed Donations Made to Churches as Charitable Contributions Under the Internal Revenue Code:

Staples v. Commissioner

As members of the Church of Scientology, Maureen and Michael Staples discovered their inner spiritual dimensions through a process called “auditing.”¹ The Staples also took “training” courses in which they studied Church doctrines, tenets, and practices.² To participate in these auditing and training sessions, see infra note 2, the Church helps an individual erase the reactive mind and gain spiritual competence. Graham, 822 F.2d at 846. Cleared of mental and physical handicaps, Church members become superior beings “equipped with a higher intelligence and a greater command over the pattern of [their lives],” INFORMATION PLEASE ALMANAC, supra, at 450; see also Hernandez v. Commissioner, 819 F.2d 1212, 1215 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988). Individuals receive benefits only in degrees through the auditing process. Graham, 822 F.2d at 846. A trained Scientist, or “auditor,” administers the auditing with the help of an electronic device called an “E-meter.” Graham v. Commissioner, 83 T.C. 575, aff’d, 822 F.2d 844 (9th Cir. 1987). “This device helps the auditor identify the [individual’s] areas of spiritual difficulty by measuring skin responses during a question and answer session.” Id. Although auditing involves private, person-to-person exchanges, the sessions are ritualistic in nature. See Staples, 821 F.2d at 1325. Hence, although auditing is structured like a counseling session, the exchange is not tailored to the particular individual. See Graham, 822 F.2d at 846 (describing standard steps in auditing process).

¹ See Staples v. Commissioner, 821 F.2d 1324, 1325 (8th Cir. 1987). The Church of Scientology was started by American science fiction writer L. Ron Hubbard, as “‘Dianetics, the modern science of mental health.’” INFORMATION PLEASE ALMANAC 450 (40th ed. 1987). The present Church maintains numerous branches around the world. See Church of Scientology v. Commissioner, 83 T.C. 381, 386 (1984), aff’d, 823 F.2d 1310 (9th Cir. 1987).

² The Church offers group training and education through basic introductory courses in the doctrines of Scientology, auditor training courses, courses in Church management methods, and general educational courses. Hernandez, 819 F.2d at 1215 n.2. Scientologists believe that spiritual gains result from studying Church doctrines. Id.
sessions, the Staples paid the "fixed donations"\(^3\) mandated by the Church. The Staples deducted these payments from their federal income taxes as charitable contributions.\(^4\)

The Commissioner of Internal Revenue denied the deductions on the ground that the Staples' fixed donations were not deductible contributions or gifts within the meaning of the Internal Revenue Code.\(^5\) In *Staples v. Commissioner*,\(^6\) the Eighth Circuit Court of Appeals rejected the IRS position.\(^7\) The court allowed the Staples' deductions, even though the couple received benefits in the form of auditing and training services, because those benefits were strictly religious in nature.\(^8\)

The three other courts of appeal that have considered the deductibility of Scientologists' fixed donations each held that the donations were not contributions or gifts.\(^9\) The courts applied traditional principles and denied the deductions because

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3. See *Staples*, 821 F.2d at 1325. The Church offers auditing sessions in fixed blocks of time called "intensives." *Graham*, 83 T.C. at 577. The Church almost always charges for training and auditing sessions, with exceptions only for fully contracted staff members. *Id.* at 577 & n.6. The Church offers discounts for package purchases and advance payments. *Hernandez*, 819 F.2d at 1215 n.3. In addition, individuals can obtain refunds for undelivered services. *Id.* Fixed donations constitute the majority of the Church's receipts, and the Church uses the donations to pay the costs of its operations and activities. *Graham*, 822 F.2d at 847.

The Church's "doctrine of exchange" requires members to make a contribution in exchange for anything of value that they receive. See *Hernandez*, 819 F.2d at 1222. Because those who do not reciprocate suffer spiritual decline, the doctrine of exchange necessitates the system of mandatory fixed donations. See *id*.

4. See *Staples*, 821 F.2d at 1325; see also 26 U.S.C. § 170 (1982 & Supp. III 1985), as amended by Tax Reform Act of 1986, Pub. L. No. 99-514, §§ 142(d), 231(f), 301(b)(2), 1831, 100 Stat. 2085, 2120, 2180, 2217, 2851 (governing deductibility of charitable contributions); *infra* note 73 and accompanying text. Because individuals may pay large yearly sums in fixed donations, deductions may be substantial. For example, in *Hernandez* the petitioning Scientologist paid $7338 to the Church during the year in question. 819 F.2d at 1215. The *Staples* opinion does not note how much the Staples paid to the Church. See 821 F.2d at 1325.

5. See *Staples*, 821 F.2d at 1325.

6. 821 F.2d 1324 (8th Cir. 1987).

7. See *id.* at 1328.

8. *Id.* at 1327; *infra* notes 85-101 and accompanying text.

9. The First Circuit was the first appellate court to address the issue. That court denied deductions to Scientologists for their fixed donations. See *Hernandez v. Commissioner*, 819 F.2d 1212, 1227 (1st Cir. 1987), *cert. granted*, 108 S. Ct. 1467 (1988). One month after that decision, the Eighth Circuit upheld the deductibility of fixed donations in *Staples*. See 821 F.2d at 1328. Since *Staples*, two circuits have followed the First Circuit and denied Scientologists' deductions. See *Miller v. IRS*, 829 F.2d 500, 506 (4th Cir. 1987); *Graham v. Commissioner*, 822 F.2d 844, 850 (9th Cir. 1987).
the Scientologists received direct benefits in return for their donations.\textsuperscript{10} The Staples court's decision excepted direct benefits that were "strictly religious" from this established test.\textsuperscript{11}

Broadly applied, the Staples ruling could affect significantly not only the Church of Scientology but also other religious and nonreligious charitable organizations.\textsuperscript{12} The finding that Scientologists' fixed donations are deductible conflicts with settled cases holding nondeductible payments made for other religious benefits, like Bar Mitzvahs and confirmation ceremonies.\textsuperscript{13} In addition, the Staples court's view of the tax code might encourage religious organizations to charge for religious services.\textsuperscript{14} The court's ruling also disadvantages secular charitable organizations,\textsuperscript{15} notwithstanding the tax code requirement of similar treatment for all charitable organizations.\textsuperscript{16} Furthermore, under the analysis employed in Staples, courts in future cases will have to distinguish between strictly religious and partially religious benefits as well as between religious and nonreligious benefits.\textsuperscript{17} Not only will this task be difficult, but it also may be unconstitutional.\textsuperscript{18}

This Comment analyzes the Eighth Circuit's conclusions regarding the deductibility of fixed donations made by members of the Church of Scientology. Part I sets forth the legal background behind the charitable contribution deduction. Part II presents the Staples court's reasoning, critiques that reasoning, and analyzes Scientologists' donations under traditional "contribution or gift" principles. This Comment concludes that the court's religious benefit test confounds settled presumptions in the law of charitable contributions. To protect the policies underlying the charitable contribution deduction, courts should find Scientologists' fixed donations nondeductible under

\begin{enumerate}
  \item See Miller, 829 F.2d at 505; Graham, 822 F.2d at 850; Hernandez, 819 F.2d at 1218; infra notes 31-61 and accompanying text.
  \item See Staples, 821 F.2d at 1326-28.
  \item With the current proliferation of television evangelism and religious cults, the test for deductibility of donations made to religious organizations takes on added importance. See FCC Watered Down PTL Report, Investigator Says, Minneapolis Star Tribune, Jan. 22, 1988, at 3A, col. 1 (discussing how Jim and Tammy Bakker appropriated, for their own use, funds solicited for PTL ministry's religious purposes).
  \item See Feistman v. Commissioner, 30 T.C.M. (CCH) 590, 592 (1972).
  \item See infra notes 127-32 and accompanying text.
  \item See infra notes 133-42 and accompanying text.
  \item See infra notes 19-20 and accompanying text.
  \item See infra notes 143-46 and accompanying text.
  \item See infra notes 143-55 and accompanying text.
\end{enumerate}
established tax principles denying deductions for donations that produce direct benefits for the taxpayer.

I. THE LEGAL CONTEXT: CHARITABLE CONTRIBUTIONS UNDER THE INTERNAL REVENUE CODE

The tax code provides that a donation to a charitable organization is deductible from a donor's federal income taxes if two prerequisites exist: the recipient organization must qualify for tax-exempt status, and any donation must constitute a "contribution or gift." Though interrelated, these two prerequisites are independent and must be assessed separately.

A. TAX-EXEMPT STATUS UNDER SECTION 501(c)(3)

An organization qualifies for tax-exempt status if it is "organized and operated" exclusively for one or more of the charitable purposes enumerated in section 501(c)(3) of the Internal Revenue Code. The organizational and operational tests are distinct, and an organization must meet both prongs to be tax-exempt.


20. Internal Revenue Code § 170 allows the deduction from taxable income of any "contribution or gift to or for the use of...[a] corporation, trust, or community chest, fund, or foundation...organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition...or for the prevention of cruelty to children or animals." 26 U.S.C. § 170(c)(2) (1982).

21. See id. § 501(c)(3); supra note 19.

22. See Treas. Reg. § 1.501(c)(3)-1(a)(1) (as amended in 1976); see also Hall v. Commissioner, 729 F.2d 632, 634 (9th Cir. 1984) (describing and analyzing organizational and operational tests). To satisfy the organizational test, a charitable body must meet four requirements. The entity's articles of organization must limit the scope of the organization's activities to exempt purposes. Treas. Reg. § 1.501(c)(3)-1(b)(1)(i)(a) (as amended in 1976); see supra note 19. The articles may "not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which themselves are not in furtherance of...exempt purposes." Treas. Reg. § 1.501(c)(3)-1(b)(1)(i)(b) (as amended in 1976). The exempt organization's articles may not empower the entity to devote substantial amounts of time to influencing legislation or...
A taxpayer may deduct a donation to a qualified tax-exempt organization only if the donation is a "contribution or gift" within the meaning of section 170 of the tax code. Because the code does not define this phrase, courts interpreting it have considered the policies that underlie the charitable contribution deduction.

1. Policies Behind Section 170

Congress created the tax deduction for charitable contributions under the premise that such donations benefit the general public. Although an individual donor might receive an inner

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satisfaction from giving or an incidental benefit shared with other members of the community, Congress determined that such indirect benefits alone should not destroy a deduction. A donation serves the broader public only when it supports a charitable organization's general purposes. If an organization must use a donation to provide a direct individualized benefit, the organization cannot use the funds to pursue ends that benefit all of society. Thus, donations that directly benefit individual donors, rather than a broader community, are not tax deductible.

2. Directness of the Benefit Test

Courts describe differently their approaches to assessing whether a donation constitutes a contribution or gift. For example, some courts ask whether a transaction evidences a quid pro quo, while others purport to inquire whether the taxpayer

that certain charitable activities benefit society and thus are desirable. See Wiedenbeck, Charitable Contributions: A Policy Perspective, 50 Mo. L. Rev. 85, 95-97 (1985) (discussing policy justifications for charitable contribution deduction). Because tax-exempt organizations operate "exclusively" for religious or charitable purposes by definition, see 26 U.S.C. § 501(c)(3) (1982); supra note 22, such organizations perform works that benefit society. The standards for attaining tax-exempt status are rigid, see id., and to maintain that rank, organizations must further specified ends that benefit the public. See 26 U.S.C. § 501(c)(3) (describing qualifications for tax-exempt status).

27. For example, an individual who gives money to a museum, see Rev. Rul. 68-432, 1968-2 C.B. 104, or an orchestra, see Rev. Rul. 67-246, 1967-2 C.B. 104, 109-10, receives a personal benefit in the continued viability of the organization. This benefit, however, reaches all the members of the community and is not limited to donating individuals.

28. The exclusive purposes requirement of § 501(c)(3) implies that a charitable recipient must have control over the donation to use toward the organization's charitable activities. Therefore, direct benefits to a donor given in return for a donation are antithetical to the exclusive purposes clause. See Wiedenbeck, supra note 26, at 102 (discussing examples of direct benefits that render contributions nondeductible under exclusive purposes clause).

29. The limitation of the § 170 deduction to a "contribution or gift" addressed two concerns. See Haak v. United States, 451 F. Supp. 1087, 1091 (W.D. Mich. 1978). Congress feared that charitable organizations offering products and services in competition with those offered by businesses would gain an unfair competitive advantage. See id. In addition, Congress recognized that when a contributor received a quid pro quo, the amount of the donation available for support of the charitable organization would be reduced by the cost of providing the benefit. See id.; see also Colliton, The Meaning of "Contribution or Gift" for Charitable Contribution Deduction Purposes, 41 Ohio St. L.J. 973, 979-1003 (1980) (emphasizing that receipt of direct benefit makes donation nondeductible).

30. See Miller v. IRS, 829 F.2d 500, 504-05 (4th Cir. 1987).

31. See id. at 502-03; Graham v. Commissioner, 822 F.2d 844, 848 (9th Cir.
harbors a donative intent.\textsuperscript{32} Regardless of characterization, the various approaches are functionally equivalent. Essentially, courts assess whether a taxpayer receives any direct benefit, as opposed to merely indirect benefits, in return for a donation.\textsuperscript{33} If the donor receives a direct benefit, the donation is not fully deductible.\textsuperscript{34}

Direct and indirect benefits are distinguished based on who receives the benefit of the donation. Specific examples illustrate the differences between the two categories. The prototypical charitable contribution deduction involves a donation in return for which a taxpayer receives only indirect benefits. For example, a taxpayer may make a donation to a bar association, an adoption agency, a museum, or any other tax-exempt organization. If she receives no individualized benefit in return, her payment is fully deductible.\textsuperscript{38} Such a taxpayer might derive an inner satisfaction from giving or might benefit, along with the rest of the community, from the recipient organization's continued vitality. The full value of the donation is deductible, however, because society receives the primary benefits from the donation.\textsuperscript{39}

The unifying factor among all direct benefits is their per-

\textsuperscript{32}See Miller, 829 F.2d at 502-03; Graham, 822 F.2d at 848-49.

\textsuperscript{33}See Miller, 829 F.2d at 504-05.

\textsuperscript{34}Compare Morton v. Commissioner, 39 T.C.M. (CCH) 621, 625 (1979) (allowing deduction for transfer of property to city for use in connection with city's water system because taxpayers received no direct benefit in return for transfer) with Ottawa Silica Co. v. Commissioner, 699 F.2d 1124, 1135 (Fed. Cir. 1983) (per curiam) (denying deduction for conveyance of land to school district because plaintiff knew that construction of school and attendant roads would substantially benefit his surrounding lands by increasing property value). Although these cases involve donations to government bodies rather than charitable organizations, the principles for finding a charitable contribution are the same.


\textsuperscript{38}Such a donation is fully deductible because the charitable organization can use the full amount of the donation toward its broad purposes. Consider, for example, a taxpayer who makes a $100 donation to a tax-exempt museum. If that taxpayer receives in return only a positive feeling from giving and a benefit in the continued vitality of the museum that she shares with the whole community, the donation is a deductible contribution or gift. See supra note 27 and accompanying text. In that case, the taxpayer receives only indirect benefits, and the museum can use the funds for its charitable purposes.

\textsuperscript{39}See id.
sonal orientation. These benefits enhance the donor in some immediate way. For example, direct benefits frequently provide tangible financial or economic gains. In the simplest case, such benefits can take the form of a tangible items such as radios, greeting cards, and meals. Direct benefits are not limited to tangible items, however. Charitable organizations can provide intangible services to a donating taxpayer just as directly as more tangible goods. Thus, direct benefits can appear in intangible forms such as insurance benefits, adoption services, medical benefits, museum membership privileges, and concert admissions.

A taxpayer who receives a direct benefit in return for a donation cannot take a full deduction. The personal nature of the direct benefit ensures that society will not be the primary beneficiary of the donation. Even though the taxpayer receives a direct benefit, however, part of the donation may be deductible. If the value of the direct return benefit is commensurate with the value of the donation, the whole donation is nondeductible. If, on the other hand, the value of the donation exceeds


42. See Murphy v. Commissioner, 54 T.C. 249, 254-55 (1970) (denying deduction for funds paid to adoption agency which provided adoption services to taxpayer).

43. See S. REP. NO. 1622, 83d CONG., 2d SESS. 196, reprinted in 1954 U.S. CODE CONG. & ADMIN. NEWS 4621, 4830-31 (noting that limitations on business deductions for charitable contributions above allowable percentage limits would not apply to employer's contribution to hospital in return for binding obligation to provide medical treatment for employees).


46. See supra note 29 and accompanying text.

47. The whole donation is nondeductible because the charitable organization must use the funds to provide the individualized benefit, and thus it can retain none of the donation to pursue its broader purposes. Consider again a taxpayer who makes a $100 donation to a tax-exempt museum. See supra note 38. If the taxpayer receives, in return for the donation, a year-long admission pass worth $100, the direct benefit received prevents the deductability of the donation. See supra note 28 and accompanying text. Because the value of the donation equals the value of the benefit, the taxpayer's benefit is not only direct but also commensurate. See supra note 29 and accompanying text; see also S. REP. NO. 1622, 83d CONG., 2d SESS. 196, reprinted in 1954 U.S. CODE
the value of the direct return benefit, the taxpayer may deduct the difference. To take this partial deduction, the taxpayer receiving such a "nominal" direct benefit must prove both that she intended to make a gift and that her donation

-Cong. & Admin. News 4621, 4831 (noting that Congress meant "contribution or gift" to include "those contributions which are made with no expectation of a financial return commensurate with the amount of the gift").

This analysis suggests a direct tradeoff between societal and individual benefits, but the correlation is not that clear. Assume a donor receives nothing in return for a payment beyond the indirect benefits received as a member of the group at the focus of the organization's generosity. In this case the organization, at least theoretically, can use the donation to maximize the benefits to society. The inverse does not necessarily follow, however. Even when a donor receives a commensurate benefit in return for a donation, the recipient organization still might use the transaction to benefit society. Consider a church that sells meals to raise funds. The purchaser of a meal cannot deduct the cost (assuming the price reflects the value of the dinner). Yet, the church may benefit if the food and preparation services are donated. The church thus could use the funds raised in meal sales toward its broader goals. This kind of attenuated benefit analysis would be difficult for courts to follow in varied circumstances.

Courts are therefore more competent to look to the primary beneficiary of the specific transaction in question because an assessment of the flow of benefits in this narrow context is more quantifiable. For examples see supra note 38 and infra note 51. Although this characterization is simplistic, it is the general mode of differentiation that courts use to assess whether a taxpayer receives a direct benefit in return for a donation.


49. See id. at 2433. The label nominal describes a benefit that is less in value than the taxpayer's donation. Essentially, the taxpayer receives a mixed benefit. On the one hand, the donor receives a direct benefit, but the value of that benefit does not equal the value of the donation. On the other hand, the individual also receives an indirect personal benefit from the part of the donation that the charitable organization uses for its broader public works. See supra note 47. Just as with commensurate return benefits, a nominal benefit can appear in a tangible or intangible form. See supra notes 40-45 and accompanying text.

50. In attempting to define "contribution or gift," courts have questioned the relevancy of the donor's subjective intent or motive. See Miller v. IRS, 829 F.2d 500, 502 (4th Cir. 1987); Hobbet, Charitable Contributions—How Charitable Must They Be?, 11 Seton Hall L. Rev. 1, 4-11 (1980) (discussing cases considering relevancy of subjective intent to charitable contribution deductions). The Supreme Court has defined the word gift under § 102 of the tax code in terms of the taxpayer's "'detached and disinterested generosity.'" Commissioner v. Duberstein, 363 U.S. 278, 285 (1960) (quoting Commissioner v. LoBue, 351 U.S. 243, 246 (1956)); 26 U.S.C. § 102 (1982). Courts have pondered "whether this definition solely in terms of donative intent should also apply to § 170, and, if not, whether and how the courts should respect the common law requirement that an inter vivos 'gift' also be made without consideration." Miller, 829 F.2d at 502; see also Colliton, supra note 29, at 974-79 (discussing history and purpose of § 170).

Some courts have applied the Duberstein test to the § 170 setting and in-
quired into the taxpayer's donative intent. See, e.g., DeJong v. Commissioner, 309 F.2d 373, 379 (9th Cir. 1962) (assessing intent of taxpayers making tuition payments to parochial schools). Others, however, have rejected the "detached and disinterested generosity" inquiry and looked objectively at whether the taxpayer received a direct return benefit. See, e.g., Oppewal v. Commissioner, 468 F.2d 1000, 1002 (1st Cir. 1972) ("The more fundamental objective test is—however the payment was designated, and whatever motives the taxpayer had in making it, was it, to any substantial extent, offset by the cost of services rendered to taxpayers in the nature of tuition?"); Singer Co. v. United States, 449 F.2d 413, 423 (Ct. Cl. 1971) ("It is our opinion that if the benefits received ... are substantial, and meaning by that, benefits greater than those that inure to the general public from transfers for charitable purposes (which benefits are merely incidental to the transfer), then in such case we feel the transferor has received ... a quid pro quo sufficient to remove the transfer from the realm of deductibility under section 170."). (emphasis in original).

Under § 170, the Supreme Court has stated that courts must inquire into the taxpayers' intentions when the individuals receive nominal benefits in return for donations. See American Bar Endowment, 106 S. Ct. at 2434; supra text accompanying notes 49-51. To be deductible, donations must advance the policies of the charitable contribution deduction. See supra notes 26-30 and accompanying text. Thus, the Court found that for donors to take a deduction when they receive a mixed benefit, part direct and part indirect, they must intend to make a charitable contribution and thus advance the organization's public policies. American Bar Endowment, 106 S. Ct. at 2434.

In nominal benefit cases, the Court essentially has created a presumption against deductibility. Because a taxpayer must show donative intent to take a deduction, the taxpayer's receipt of a direct but minimal benefit—either a good or a service—could make the entire payment nondeductible. The Court, however, has not required a similar showing of donative intent when a taxpayer receives either only indirect benefits as a member of society or a fully commensurate benefit. Cf. Miller, 829 F.2d at 503 (professing to focus on taxpayers' intent but assessing intent from structure of transaction, that is, whether exchange evinced quid pro quo); Graham v. Commissioner, 822 F.2d 844, 848-49 (9th Cir. 1987) (same). When an individual receives only indirect benefits in return for a donation and society receives the primary benefits, the policies of the charitable contribution deduction are satisfied and the issue of intent becomes nugatory. If a taxpayer's donation primarily benefits the public, courts should disregard the issue of intent.

A similar argument applies when a taxpayer receives a direct and commensurate benefit. In such a case, intent must be irrelevant. If individuals could claim deductions by alleging donative intentions even when those people receive commensurate return benefits, any transaction involving a charitable organization would be deductible. Such a construction would run afoul of § 170. In that section Congress limited deductions to contributions or gifts partly to avoid giving charitable organizations a competitive edge over nonexempt entities in providing goods and services in the marketplace. See Haak v. United States, 451 F. Supp. 1087, 1091 (W.D. Mich. 1978). Intent cannot be a factor in a court's determination of deductibility when the individual receives a commensurate return benefit because, regardless of the donor's intent, the policies of the charitable contribution deduction are not forwarded, i.e., the public does not receive the primary benefits from the donation. See supra notes 26, 28 and accompanying text.
exceeded the value of the benefit received.\textsuperscript{51}

3. Donations to Religious Organizations

Section 170 of the tax code does not distinguish between religious and nonreligious charitable organizations.\textsuperscript{52} Thus, courts traditionally have determined whether a donation to a religious organization is a contribution or gift by using directness of the benefit principles.\textsuperscript{53} Courts have allowed full deductions for donations made to churches in forms such as collection plate offerings\textsuperscript{54} and basket contributions.\textsuperscript{55} People who make these types of donations receive only indirect benefits,\textsuperscript{56} while the primary benefits fall on the congregation as a whole.\textsuperscript{57} When a person receives a direct benefit in return for a donation to a religious organization, the donation is not fully deductible.\textsuperscript{58} The donor can deduct only the portion of the don-

\textsuperscript{51} American Bar Endowment, 106 S. Ct. at 2434. Consider again the taxpayer who donates $100 to a tax-exempt museum. See supra notes 38, 47. If that taxpayer receives a one-month admission pass worth $10 in return for her donation, she has received a nominal benefit. The benefit is direct in that it falls exclusively on the individual donor. The museum cannot use the $10 toward its broader purposes. See supra note 29 and accompanying text. The benefit, however, is nominal in the sense that it is worth less than the full donation. The directness of the nominal benefit, like the directness of a commensurate benefit, makes the donation nondeductible. See supra notes 28-30 and accompanying text. Because the nominal benefit does not equal the value of the donation, however, the taxpayer can deduct the portion of the donation over the value of the nominal benefit—i.e., $90—if she proves she intended to make a charitable contribution.

\textsuperscript{52} See supra notes 19-20.

\textsuperscript{53} Cf. Rev. Rul. 70-47, 1970-1 C.B. 49 (allowing deductions for pew rents, periodic church dues, and building fund assessments because benefits to individuals were too remote).

\textsuperscript{54} See Nelsen v. Commissioner, 7 T.C.M. (CCH) 172, 178-79 (1948), aff'd \textit{per curiam}, 177 F.2d 203 (9th Cir. 1949).

\textsuperscript{55} See A.R.M. 2, 1 C.B. 150 (1919).

\textsuperscript{56} See Miller v. IRS, 829 F.2d 500, 505 (4th Cir. 1987). These indirect benefits are shared by all members of the congregation. Whether the donation helps to buy an organ, pay a clergy member, or heat a church building, the benefit is distributed across the church community.

\textsuperscript{57} This kind of indirect benefit is similar to the benefit a donor receives when giving to a secular charitable organization. When individuals give to charitable operations, they receive benefits as members of the organization’s community. See supra note 27 and accompanying text. Although a religious congregation may be significantly smaller than the group within reach of a secular charitable organization, courts view the two similarly. Cf. cases cited supra notes 54-55.

\textsuperscript{58} Compare Rev. Rul. 76-232, 1976-1 C.B. 62 (allowing deduction for donation for weekend marriage seminar conducted by charitable organization only to extent that payment actually exceeded value of service) \textit{with} Nelsen, 7 T.C.M. (CCH) at 178-79 (allowing deduction for collection plate offerings) and
nation that exceeds the value of the direct return benefit. This rule holds true whether the direct benefit is a tangible good, such as a hymnal or prayer book, or an intangible religious service, such as a Bas Mitzvah or a confirmation.

Although the tax code does not distinguish between religious and nonreligious charitable organizations, the United States Constitution requires added considerations for courts inquiring into the affairs of religious organizations. When courts apply the "contribution or gift" limitation to donations to religious organizations, they are bound by the first amendment. Under the free exercise clause, the government may neither pressure followers of a religion to commit acts forbidden by their religion nor prevent them from engaging in conduct which their faith mandates. Under the establishment clause, the government may neither advance certain religions

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59. See supra notes 48-51 and accompanying text.
60. For a description of a Bas Mitzvah ceremony, see infra text accompanying note 122.
61. See Feistman v. Commissioner, 30 T.C.M. (CCH) 590, 592 (1972) (denying deductions for payments made in return for performances of Bas Mitzvah and confirmation even though both are religious services); see also Oppewal v. Commissioner, 468 F.2d 1000, 1002 (1st Cir. 1972) (holding tuition payments to parochial schools nondeductible because taxpayers received service in return for their donations); Winters v. Commissioner, 468 F.2d 778, 780-81 (2d Cir. 1972) (same); DeJong v. Commissioner, 309 F.2d 373, 379 (9th Cir. 1962) (same).
62. The first amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." U.S. CONST. amend. I. The first amendment does not require the government to provide tax deductions for gifts to religious organizations. See Regan v. Taxation with Representation, 461 U.S. 540, 546 (1983). Nor does the first amendment prohibit the government, once it has created such a deduction, from limiting the amount any taxpayer can deduct. See 26 U.S.C. § 170(b)(1)(A)(i) (1982).
64. In assessing whether a governmental action works to establish religion, courts inquire: (1) whether the challenged law or conduct has a secular purpose; (2) whether its principal or primary effect is to advance or inhibit religion; and (3) whether it creates an excessive entanglement of government with religion. Lemon v. Kurtzman, 403 U.S. 602, 612-13 (1971). A government-
to the detriment of others\textsuperscript{65} nor inhibit certain religions to the benefit of others.\textsuperscript{66} Thus, courts face the delicate task of protecting free exercise rights without favoring one religion over another.\textsuperscript{67}

4. Decisions on Fixed Donations Paid to the Church of Scientology

The First,\textsuperscript{68} Fourth,\textsuperscript{69} and Ninth\textsuperscript{70} Circuits have considered...
whether a Scientologist’s fixed donation for auditing or training sessions constitutes a “contribution or gift” under section 170.\textsuperscript{71} In these cases the IRS maintained that a fixed donation was not a “contribution or gift.”\textsuperscript{72} The Scientologists argued that fixed

\begin{itemize}
  \item 69. Miller, 829 F.2d 500.
  \item 70. Graham, 822 F.2d 844.
  \item 71. The IRS initially concluded that payments for auditing and training, like tuition payments to parochial schools, were not deductible contributions or gifts unless taxpayers could establish that their payments exceeded the value of the benefits and privileges received in return. See Rev. Rul. 78-189, 1978-1 C.B. 68. Before this IRS determination, thousands of Scientologists had claimed deductions for their fixed donations. See Miller, 829 F.2d at 501. These Scientologists petitioned the tax court, challenging the Commissioner’s ruling. The taxpayers stipulated that they would be bound by the findings of fact and law in a tax court test case involving only a few Scientologists. All of the Scientologists, however, reserved the right to appeal. See id.
  
  The tax court upheld the Commissioner and found that the payments were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate return benefit. Graham v. Commissioner, 83 T.C. 575, 581 (1984), aff’d, 822 F.2d 844 (9th Cir. 1987). After the adverse tax court decision, Scientologists raised appeals in all of the circuits except the Federal Circuit. Hernandez, 819 F.2d at 1216 n.5. The cases before the First, Fourth, Eighth, and Ninth Circuits all arose through this process.
  
  72. The IRS originally opposed Scientologists’ deductions on a separate ground, arguing that the Church of Scientology did not qualify for tax-exempt status. In 1984, the tax court affirmed an IRS decision to revoke the Church of Scientology of California’s tax-exempt status for the years 1970 to 1972. See Church of Scientology v. Commissioner, 83 T.C. 381 (1984), aff’d, 823 F.2d 1310 (9th Cir. 1987); see also Friedland, Constitutional Issues in Revoking Religious Tax Exemptions: Church of Scientology of California v. Commissioner, 37 U. FLA. L. REV. 565 (1985).

  While awaiting a decision in the California church’s appeal to the Ninth Circuit, the IRS challenged Scientologists’ deductions on a second ground, claiming that a fixed donation did not constitute a “contribution or gift.” See supra note 71. That particular challenge produced the line of cases in the First, Fourth, Eighth, and Ninth Circuits. In all of those cases, the IRS stipulated that the Church was tax-exempt. See infra note 87.

  On July 28, 1987, the Ninth Circuit affirmed the Commissioner’s three-year revocation of the California church’s tax-exempt status. Church of Scientology v. Commissioner, 823 F.2d 1310, 1322 (9th Cir. 1987).

  Until other circuits reach a similar conclusion, the decisions in Miller, Graham, Staples, and Hernandez remain important for several reasons. Another circuit could come to a conclusion at odds with the Ninth Circuit’s tax-exempt status ruling. Furthermore, the rationales of the four circuit courts addressing the deductibility of fixed donations apply far beyond the narrow factual contours presented in the cases. See infra notes 119-55 and accompanying text. Perhaps most importantly, the Ninth Circuit’s decision pertained only to the Church’s California branch and, even in that context, only for three specific tax years. Various Church branches have maintained tax-exempt status in other locations and periods. See, e.g., INTERNAL REVENUE SERV., U.S. DEP’T OF THE TREASURY, PUB. NO. 78, CUMULATIVE LIST OF ORGANIZATIONS 246 (1986) (listing as organizations qualified to receive deductible contributions Church branches in 10 states); Announcement 76-119, 1976-37 I.R.B. 27
donations were deductible because the only benefits received were strictly religious in nature. The taxpayers also raised first amendment concerns.

In analyzing the Scientologists' donations, each of the courts asked whether the payments were part of a quid pro quo. The courts did not limit their inquiry to whether the taxpayers received economic benefits. Instead, each court emphasized that the Scientologists making the fixed donations intended to receive a religious service in the form of auditing or training in return for their payments. Because the taxpayers expected a commensurate return benefit, all three courts con-

(Rescinding suspension of advance assurance of deductibility for donations to Church of Scientology of New York and noting that donations made to Church during suspension were deductible).

73. See Miller, 829 F.2d at 503; Graham, 822 F.2d at 848; Hernandez, 819 F.2d at 1216-17.

74. The taxpayers claimed that the Commissioner's construction of § 170 abridged their free exercise rights under the first amendment. See Hernandez, 819 F.2d at 1215. The Scientologists also contended that the Commissioner's position resulted in an establishment of religion, also prohibited by the first amendment. See id. Further, the Scientologists raised a claim of selective prosecution under the first amendment and the equal protection component of the fifth amendment. See id.

75. See Miller, 829 F.2d at 505; Graham, 822 F.2d at 849; Hernandez, 819 F.2d at 1217.

76. See Miller, 829 F.2d at 505; Graham, 822 F.2d at 849; Hernandez, 819 F.2d at 1217; infra note 92 and accompanying text. The courts agreed that the controlling question was not whether the payments were gifts for religious purposes but whether they were gifts at all. See Miller, 829 F.2d at 505; Graham, 822 F.2d at 848; Hernandez, 819 F.2d at 1217. The three appellate courts thus characterized the issue as "whether a taxpayer who paid the price set by his church in exchange for specified services provided by the church is entitled to deduct the payment from his taxable income as a charitable contribution." Id. at 1215.

77. See Miller, 829 F.2d at 503; Graham, 822 F.2d at 850; Hernandez, 819 F.2d at 1217. Thus the courts adopted the tax court's conclusion that fixed donations were not contributions or gifts because they "were not voluntary transfers without consideration, but were made with the expectation of receiving a commensurate benefit in return." Graham v. Commissioner, 83 T.C. 575, 581 (1984), aff'd, 822 F.2d 844 (9th Cir. 1987).

The courts paired a religious service, viewed as the quid, with the fixed contributions, viewed as the quo, and analogized these scientologist cases to those cases concerning tuition paid to parochial schools. See supra note 61. In this framework the Ninth Circuit found that

[s]olicitation for the services and agreements to render them based on price; conformity in price lists, and graduated prices based on the level of instruction; the contractual right to receive the service, and the right of refund if the service was not performed; account cards; and discounts for advance payments, all underscore that the payment matched, with some precision, the benefits to be received.

Graham, 822 F.2d at 849.
cluded that fixed donations were not contributions or gifts.\textsuperscript{78}

Although the courts reached similar conclusions, they employed somewhat different analyses.\textsuperscript{79} The First Circuit focused on the fixed and mandatory nature of the fixed donations in finding a quid pro quo.\textsuperscript{80} That court went so far as to note that the individualized nature of the benefit was irrelevant to the question of deductibility.\textsuperscript{81} Although the Fourth and Ninth Circuits claimed to focus on the Scientologists' intentions, both courts in fact looked to the structure of the transaction in finding a quid pro quo.\textsuperscript{82} Focusing on the external features of the transaction, the Ninth Circuit stated that the fixed and mandatory nature of the payment served as an expedient for an inquiry into motives.\textsuperscript{83} The Fourth Circuit likewise looked to the structure of the transaction to assess the taxpayers' intentions.\textsuperscript{84}

\begin{itemize}
\item \textsuperscript{78} See Miller, 829 F.2d at 503; Graham, 822 F.2d at 850; Hernandez, 819 F.2d at 1218. As the Ninth Circuit noted:
  
  If a transaction is structured in the form of a quid pro quo, where it is understood that the taxpayer's money will not pass to the charitable organization unless the taxpayer receives a specific benefit in return, and where the taxpayer cannot receive the benefit unless he pays the required price, then the transaction does not qualify for the deduction under section 170. Graham, 822 F.2d at 849.

  The Scientologists made no alternative claim that they received only a nominal benefit, see supra notes 49-51 and accompanying text, or a benefit less in value than their fixed donations. See Hernandez, 819 F.2d at 1216. The Church members argued only that they could deduct the full value of their fixed donations because they received a strictly religious benefit in return for their payments. See supra note 73 and accompanying text.

  \textsuperscript{79} The tax court denied the Scientologists' deductions because they expected to receive a commensurate return benefit. See Graham v. Commissioner, 83 T.C. 575, 581 (1984), aff'd, 822 F.2d 844 (9th Cir. 1987); supra note 77.

  \textsuperscript{80} See Hernandez, 819 F.2d at 1219, 1227.

  \textsuperscript{81} See id.

  \textsuperscript{82} See Miller, 829 F.2d at 503; Graham, 822 F.2d at 849-50.

  \textsuperscript{83} See Graham, 822 F.2d at 848-49.

  \textsuperscript{84} See Miller, 829 F.2d at 503. Because the three courts decided against the Scientologists on their statutory claim, the First, Fourth, and Ninth Circuits also addressed the Scientologists' constitutional claims. See supra note 74 and accompanying text. The three courts found that the Scientologists' free exercise claims lacked merit. See Miller, 829 F.2d at 506; Graham, 822 F.2d at 853; Hernandez, 819 F.2d at 1225. The courts held that denial of the tax deduction did not require the abandonment of a central religious practice. Miller, 829 F.2d at 506; Graham, 822 F.2d at 851; Hernandez, 819 F.2d at 1222; see also supra note 63 and accompanying text. The courts, in addition, agreed that even if their interpretation of § 170 violated the free exercise clause, the government's compelling interests in maintaining a uniform tax system and in encouraging charitable contributions sufficiently outweighed any incidental
II. DEDUCTIBILITY OF FIXED DONATIONS MADE TO THE CHURCH OF SCIENTOLOGY: STAPLES v. COMMISSIONER

A. THE EIGHTH CIRCUIT'S RELIGIOUS BENEFIT TEST

In Staples v. Commissioner,\(^8\) the Eighth Circuit determined that fixed donations made to the Church of Scientology, in return for training and auditing services, were deductible as charitable contributions.\(^8\) The court began its analysis by looking at the nature of the benefit the Scientologists received. The court emphasized the government's stipulation to the religious nature of the Scientologists' activities.\(^8\) Because the government stipulated that the Church of Scientology was a tax-

burdens on the Scientologists' religious beliefs. See Miller, 829 F.2d at 505; Graham, 822 F.2d at 852-53; Hernandez, 819 F.2d at 1225; supra note 67.

Similarly, the First Circuit thoroughly discussed the Scientologists' claims of an establishment clause violation. The court rejected the taxpayers' argument that § 170 on its face created a denominational preference. Hernandez, 819 F.2d at 1218; see also Miller, 829 F.2d at 505; cf. Wallace v. Jaffree, 472 U.S. 38, 56 (1985) (finding that legislative history showed that sole purpose underlying moment of silence statute was to convey message of state endorsement of prayer in public schools). The Hernandez court noted that the statute provided a secular criterion for encouraging gifts to all religious and nonreligious charitable organizations. 819 F.2d at 1219.

The First Circuit also rejected the petitioners' allegations that the Commissioner discriminated against churches that conduct individual rather than congregational services, id., and against churches that require fixed payments for services rather than relying on voluntary contributions. Id. That court concluded that the purpose and primary effect of § 170 was to encourage gifts to charitable organizations and that any incidental impact of this neutral statute on the beliefs of aScientologist was negligible. Id.; see also Miller, 829 F.2d at 505. The Ninth Circuit in Graham noted that any disparate effect upon Scientologists was not unconstitutional because the government had sufficient and compelling reasons for its rule. 822 F.2d at 853; see also supra note 67.

Finally, the Miller, Graham, and Hernandez courts considered the Scientologists' claims of selective prosecution in violation of the first amendment and the equal protection component of the fifth amendment. The courts held that the taxpayers failed to show that the government acted with discriminatory intent. Miller, 829 F.2d at 505; Graham, 822 F.2d at 853; Hernandez, 819 F.2d at 1227. Apparently, the only evidence of discriminatory intent the Scientologists offered consisted of internal IRS memoranda indicating that the Service considered the question of deductibility a close one. See id. at 1226.

85. 821 F.2d 1324 (8th Cir. 1987). Procedurally, the Staples case arose in exactly the same fashion as did the cases in the First, Fourth, and Ninth Circuits. See supra notes 71-72.

86. Staples, 821 F.2d at 1325.

87. Id. Specifically, the government stipulated (1) that Scientology was a religion and (2) the Scientology organization was a church within the meaning of § 170(b)(1)(A)(i) and a tax-exempt religious institution under §§ 170(c)(2), 501(a), and 501(c)(3). Id.; see also Miller, 829 F.2d at 501; Graham, 822 F.2d at 846, 848; Hernandez, 819 F.2d at 1216. The Staples court noted the stipulations
exempt organization, it impliedly agreed that the Church was
organized and operated exclusively for religious purposes. The IRS also conceded that auditing and training were religious
observances rather than educational services. The Eighth Cir-
cuit determined from these facts that auditing and training ses-
sions, the benefits the Church members received in return for
their fixed donations, were “strictly religious practices.”

The Staples court next considered section 170 of the tax
code. The court noted that authorities finding a donation non-
deductible generally refer to the donor’s receipt of a material,
financial, or economic benefit in return for the donation. The
Eighth Circuit determined, however, that courts should con-
strue section 170 in such a way as to be sensitive to religious
practices. The court found this construction consistent with
the policies underlying the charitable contribution deduction. The
Staples panel stressed that religious observances of any
faith were considered under the law of charity to be of spiritual
benefit to the general public. According to the court, strictly
religious practices were “inherently charitable” in character.
The court thus concluded that no presumption of a quid pro
quo could arise when the return benefit was the right to par-
ticipate in a strictly religious practice.

The Staples court specifically held that regardless of the

“require that the religious nature of the Scientology activities at issue in these
cases be recognized.” 821 F.2d at 2326.

The IRS also conceded that auditing and training were not “instructional
or educational,” but were forms of religious observance in which “no subject
matter [was] taught, studied or learned,” and that the Church did not actively
solicit contributions from its members or the public, but supported its opera-
tions principally through fixed donations paid by its members. Miller, 829 F.2d at 501.

88. See Staples, 821 F.2d at 1325; supra note 87.
90. See Staples, 821 F.2d at 1325; supra note 87.
91. Staples, 821 F.2d at 1327.
92. See id. at 1326. The court distinguished strictly religious or spiritual
benefits from material or economic returns. Id. at 1328.
93. See id. at 1326.
94. See id.
95. See id.
96. Id. at 1327.
97. See id. at 1327. The Eighth Circuit noted that neither the tax court
nor the government cited a case in which a taxpayer had been denied a deduc-
tion for payments keyed to participation in strictly religious practices. Id. at 1326. The court emphasized that society does not place a monetary value on
religious practices. See id. at 1327. Furthermore, the court believed that the
stipulations foreclosed any reliance on the Church’s fixed donations as repre-
senting the value of its religious practice. See id. The court found that under
CHARITABLE DEDUCTIONS

Timing of payments or a church’s methods of soliciting contributions from its members, amounts given to a church with no return other than participation in “strictly spiritual and doctrinal religious practices” were contributions within the meaning of section 170. Because the court found that Scientologists received the strictly religious practices of auditing and training in return for fixed donations, the court upheld deductions for those payments. Thus, the court concluded that the religious benefit the Scientologists received was not a recognizable benefit under the tax code.

B. ASSESSING THE EIGHTH CIRCUIT’S ANALYSIS

In crafting its religious benefit test and upholding the Scientologists’ deductions, the Eighth Circuit created a novel exception to the traditional directness of the benefit approach for determining when a donation is a contribution or gift. The court’s analysis is flawed, however, and the ramifications of its decision are highly problematic. In determining that auditing and training are strictly religious practices, the Staples court failed to assess independently whether a fixed donation is a contribution or gift under section 170. Thus, the court overlooked one of the two distinct questions that determines the deductibility of a donation. Furthermore, the court’s new religious benefit test likely will face constitutional challenges in later cases. These faults in the Eighth Circuit’s analysis derive largely from the court’s misinterpretation of the policies underlying the charitable contribution deduction. In the final analysis, the policies behind section 170 mandate the denial of the stipulations fixed donations were not market prices set to reap a profit, but merely the Church’s chosen method for raising funds. See id. at 1327-28.

98. Id. at 1327. The court must have used “practices” to emphasize the religious and doctrinal nature of auditing and training.

99. See id. at 1328. In reaching its conclusion, the Eighth Circuit criticized the tax court’s characterization of the Church’s operations as commercial in nature. See id. at 1325-26. The appellate court pointed out that the tax court’s construction of § 170, see supra note 77, would mean that deductibility of “payments relative to participation in bona fide religious practices will depend on the mechanism adopted by the church to solicit support from its members.” Staples, 821 F.2d at 1326.

100. See Staples, 821 F.2d at 1328. The court distinguished tuition paid for parochial school education by noting that the benefits of such an education were primarily secular. Id. at 1327; see also supra note 61.

101. Because the Staples court ruled for the Scientologists on their statutory claim, the court did not discuss the constitutional issues. See Staples, 821 F.2d at 1328; supra notes 74, 94.
deductions for Scientologists' fixed donations for auditing and training sessions.

1. Failings of the Eighth Circuit's Analysis

a. The Eighth Circuit's Initial Determination: Auditing and Training as Strictly Religious Practices

In making its determination that auditing and training sessions are strictly religious practices, the Staples court overemphasized the significance of the government's stipulations. The court concluded that the Scientologists received strictly religious benefits based solely on the IRS's stipulations that auditing and training are religious observances and that the Church of Scientology is organized and operated exclusively for religious purposes.

The court's logic must have proceeded something like this. Because the Church is tax-exempt, it is organized and operated exclusively for religious purposes. Because the Church is organized and operated exclusively for religious purposes, its spiritual and doctrinal activities must be "strictly" religious in nature. Because auditing and training are spiritual or doctrinal activities of the Church, they must be strictly religious. Therefore, under the court's legal standard, the religious benefit test, Scientologists must be able to deduct the fixed donations they make for such strictly religious services.

Because all tax-exempt religious organizations are organized and operated exclusively for religious purposes, however, the court's reasoning proves too much. Under the Eighth Circuit's analysis, all of the spiritual and doctrinal benefits tax-exempt religious bodies grant are strictly religious in nature. Almost all the benefits of these institutions are of a religious nature, however. If the strictly religious nature of a return benefit automatically makes a donation a contribution or gift, granting a religious organization tax-exempt status would make almost any donation to that entity tax deductible.

This result is inconsistent with Congress's intent as evidenced in the tax code. In contrast to the Eighth Circuit's approach, Congress explicitly mandated a two-step test to assess

102. See supra notes 85-91 and accompanying text.
103. See supra notes 87-91 and accompanying text.
104. See supra note 87.
105. See Staples, 821 F.2d at 1326; supra note 19.
106. See supra notes 92-101 and accompanying text.
107. See supra note 22.
the deductibility of a donation. 108 The first step requires that an organization be tax-exempt and ensures that the entity operates for a general charitable purpose. 109 The second step demands that a donation be a contribution or gift and ensures that each specific transaction furthers the recipient organization's charitable goals. 110 Even if a charitable organization is tax-exempt, a donation paid to that entity still must qualify as a contribution or gift under section 170. 111 By resting its finding that auditing and training are strictly religious practices on the fact that the Church operates exclusively for religious purposes, the Staples court eliminated the second step of this approach. 112 The court completely failed to consider independently whether a fixed donation is a contribution or gift. 113

The Eighth Circuit's approach leads to the conclusion that almost all benefits provided by tax-exempt religious organizations are strictly religious in nature. A closer look at the court's reasoning, however, suggests that the court intended to distinguish among the types of religious benefits that religious organizations can convey. The court, in fact, misapplied its own legal standard and failed to examine properly whether auditing and training are strictly religious practices. In finding that those sessions are strictly religious practices, the court simply overstated the IRS's stipulations.

In determining that auditing and training are deductible, strictly religious benefits, the court relied on the stipulation that auditing and training are religious observances. 114 According to the court, no quid pro quo arises if the return benefit is

108. See Estate of Wood v. Commissioner, 39 T.C. 1, 6 (1962).
109. See supra notes 19, 21-22 and accompanying text.
110. See supra notes 26-30 and accompanying text.
111. See Estate of Wood, 39 T.C. at 6.
112. Although the First, Fourth, and Ninth Circuits all criticized the Scientologists' statutory arguments which the Eighth Circuit accepted, see Miller v. IRS, 829 F.2d 500, 503 (4th Cir. 1987); Graham v. Commissioner, 822 F.2d 844, 850 (9th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1217 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988), none explicitly recognized that the Eighth Circuit's characterization of auditing and training as strictly religious practices ignored the contribution or gift analysis. The First Circuit came closest to realizing the nature of the Scientologists' claims when it remarked that the taxpayers maintained "that all payments to churches for religious services—whether gifts or not—should be tax deductible under section 170." Hernandez, 819 F.2d at 1217.
113. The Eighth Circuit may have acted intuitively to protect a religious minority. Although this instinct is admirable, courts should address such concerns under a free exercise or establishment clause analysis. See supra notes 62-67, 84 and accompanying text.
114. See Staples, 821 F.2d at 1326.
merely the right to participate in such strictly religious practices. In deriving its exception to the directness of the benefit test, however, the court tried to distinguish the Staples case from cases denying deductions to taxpayers who make tuition payments to tax-exempt sectarian schools.\textsuperscript{115} According to the court, payments to tax-exempt sectarian schools could be deductible but for the element of secular education involved in the taxpayers' return benefits.\textsuperscript{116} That secular element makes the benefits something less than strictly religious. Thus, the court implied that religious bodies can furnish religious benefits, even spiritual or doctrinal benefits,\textsuperscript{117} that are not strictly religious. Under the religious benefit test therefore, a court must distinguish between strictly and partially religious benefits. A taxpayer may deduct a donation only if she receives strictly religious benefits. The Staples court found that auditing and training are strictly religious benefits merely because the IRS stipulated to their religious character. In focusing only on this stipulation, the court ignored the Scientologists' admissions that auditing and training provide secular benefits.\textsuperscript{118} In distinguishing the tuition cases, the court recognized that a secular component may make a return benefit not strictly religious. The court should have made a similar inquiry in the Staples case. The court thus failed to consider the distinction demanded by its own test.

b. The Eighth Circuit's Legal Standard: Implications of the Religious Benefit Test

Disregarding the Eighth Circuit's inability to apply its own legal standard, the court's religious benefit test has further significant problems. If courts apply the reasoning of the Staples court broadly, that analysis will cast doubt upon the validity of earlier cases addressing the deductibility of certain donations to religious organizations.\textsuperscript{119} For example, in a case the Staples

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  \item \textsuperscript{115} See id. at 1326; supra note 61.
  \item \textsuperscript{116} See Staples, 821 F.2d at 1326-27.
  \item \textsuperscript{117} See id. The religious education a sectarian school provides often includes spiritual and doctrinal training. See infra note 119.
  \item \textsuperscript{118} See Hernandez v. Commissioner, 819 F.2d 1212, 1217 n.8 (1st Cir. 1987) (church claimed that auditing and training help people to overcome bad habits and physical pain and to improve their communicative and learning capabilities), cert. granted, 108 S. Ct. 1467 (1988).
  \item \textsuperscript{119} For example, the religious benefit test might affect decisions refusing to find that tuition payments to parochial schools were deductible contributions or gifts. See Oppewal v. Commissioner, 468 F.2d 1000, 1002 (9th Cir. 1972) (concluding that taxpayers involved received personal benefits in exchange for
court failed to mention, the tax court held that a rabbi's performance of a Bas Mitzvah in return for a donation to a temple made the payment nondeductible.\textsuperscript{120} Comparing the Bas Mitzvah ceremony to the Scientologists' auditing and training sessions shows that both seem strictly religious.\textsuperscript{121} In a Bas Mitzvah ceremony, a young girl, during a sabbath service, chants prayers, leads the congregation, and may read from the Torah.\textsuperscript{122} In auditing and training sessions, a Scientologist works with an auditor to erase the part of the mind filled with tuition); Winters v. Commissioner, 468 F.2d 778, 781 (2nd Cir. 1972) (same); DeJong v. Commissioner, 309 F.2d 373, 379 (9th Cir. 1962) (same). Although these cases might appear to be quite different from the Scientologist litigation, the four Scientologist cases all note the tuition cases in some way. See Miller v. IRS, 829 F.2d 500, 502 (4th Cir. 1987); Graham v. Commissioner, 822 F.2d 844, 850 (9th Cir. 1987); Staples, 821 F.2d at 1326; Hernandez, 819 F.2d at 1217. In fact, the First Circuit cites the parochial school tuition cases for the proposition that the government may recognize the economic cost of religiously oriented services that religious organizations provide to taxpayers. Id. at 1217.

Although the Staples court attempts to distinguish the tuition cases based on the secular benefit involved in a parochial school education, see 821 F.2d at 1328, such schooling necessarily provides some religious benefit. Many schools provide direct teaching of religious doctrines, practices, and values. Although the extent of this benefit might vary substantially among sectarian primary and secondary schools and colleges, the benefit some institutions provide might be strictly religious in nature.

Despite the IRS stipulations that auditing and training are religious observances, see supra note 87, frequently no precise measure of an activity's religious nature exists. For example, the Church of Scientology itself maintains that auditing and training sessions can help individuals improve some nonreligious aspects of their lives. See Hernandez, 819 F.2d at 1217 n.8; supra note 118. Therefore, even if a primary or secondary parochial education is too secular to be strictly religious perhaps a seminary education meets the Eighth Circuit's standard.\textsuperscript{120}

\textsuperscript{120} Feistman v. Commissioner, 30 T.C.M. (CCH) 590, 592 (1972) (holding that performance of Bas Mitzvah provided direct and personal benefit to donating taxpayers). The Bas Mitzvah is perhaps the most analogous factual setting to the auditing and training of the Scientologist cases. Despite this, the Fourth, Ninth, and Eighth Circuits failed even to acknowledge the case. In Hernandez the First Circuit noted Feistman, but merely as evidence of the IRS's lack of discriminatory intent, an element of the taxpayers' selective prosecution claim. See Hernandez, 819 F.2d at 1226.

\textsuperscript{121} The Feistman court noted the social nature of the Bas Mitzvah ceremony and compared such an event to a wedding. See Feistman, 30 T.C.M. (CCH) at 592. The tax court drew an analogy to the parochial school tuition cases, see id. (citing DeJong v. Commissioner, 309 F.2d 373 (9th Cir. 1962)), and concluded that the payment for the Bas Mitzvah was a personal expenditure regardless of the religious nature of the benefit. See Feistman, 30 T.C.M. (CCH) at 592.

\textsuperscript{122} See THE NEW STANDARD JEWISH ENCYCLOPEDIA 234 (C. Roth & G. Wigoder eds. 1970).
negative images and gains spiritual competence. There seems to be little basis for distinguishing the religious nature of these ceremonies. The tax court's denial of a deduction in the Bas Mitzvah case follows from the directness of the benefit test, because the donors received a direct benefit in return for their donation. The Eighth Circuit's religious benefit test likely would demand a contrary result.

123. See supra note 1.
124. Although the Eighth Circuit noted that it found no case in which a deduction was denied for payments keyed to participation in strictly religious practices, see Staples, 821 F.2d at 1326, the court ignored Feistman. The court's argument is weakened even further because it did not cite any case in which a deduction was allowed when the payment was accompanied by reciprocal participation in strictly religious practices.

The social nature of a Bas Mitzvah, see supra note 120, arguably distinguishes Feistman from the Scientologist cases. A closer analysis, however, shows that Feistman is in fact directly analogous to Staples. The parties in the four Scientologists cases stipulated that Scientology is a religion and that auditing and training are forms of religious observance. See supra note 87. The Church itself, however, advertises auditing and training by promoting the nonreligious benefits from those sessions. See supra note 118 and accompanying text. Therefore, auditing and training have nonreligious facets, just as a Bas Mitzvah does, even though both Scientology sessions and Bas Mitzvahs are religious ceremonies (either in fact or by stipulation).

125. Decisions denying deductions for such donations comport with a directness of the benefit analysis. The directness test protects the policies underlying § 170. See supra notes 26-29 and accompanying text. When a taxpayer receives a Bas Mitzvah ceremony in return for a donation, the religious organization must use some of the funds to provide the individualized service and therefore cannot use all of the donation to benefit the broader congregation. See Feistman, 30 T.C.M. (CCH) at 592 (noting personal nature of expenditures); supra note 47. Because these benefits fall directly on the taxpayer, the policies behind § 170 require the denial of a full deduction. As such a case shows, focusing on the religious or nonreligious nature of the benefit a taxpayer receives does not maximize benefits to society.

126. The Staples court noted that participation in strictly religious practices does not constitute a recognizable return benefit. See Staples, 821 F.2d at 1328. A finding that auditing and training are strictly religious practices must take account of the nonreligious aspects of those services. See supra notes 102-18 and accompanying text. Therefore, if the Eighth Circuit's conclusion regarding the strictly religious nature of those practices is to stand, the term strictly must be read as synonymous with predominantly (that is, more than 50%). Because strictly must mean something less than exclusively (that is, at or almost 100%), the Feistman facts directly parallel those in Staples. Even though a Bas Mitzvah serves in part as a social function, it is still a solemn religious ceremony. The social portion of a Bas Mitzvah certainly does not outweigh the nonreligious component of auditing and training. Therefore, under the religious benefit test, the return benefit of a Bas Mitzvah would not destroy a deduction.

If the Eighth Circuit interprets strictly religious practices as exclusively religious, few cases would fall under the court's test. The Scientologist and Bas Mitzvah cases do not present exclusively religious practices. The only po-
In addition to placing in question these previously settled conclusions, the court’s approach might affect the ways in which religious organizations operate.\textsuperscript{127} Under the religious benefit test, donors can deduct donations to religious organizations even if they receive direct religious benefits.\textsuperscript{128} This favorable tax treatment might encourage some religious organizations to charge for religious services.\textsuperscript{129} If religious organizations could raise needed funds by providing religious ceremonies, those entities might spend significant amounts of time advertising their services. The organizations thus would have less time to pursue activities that benefit the broader society.\textsuperscript{130} This pay-as-you-go arrangement also might invite the proliferation of sham religions desiring to make tax-free money.\textsuperscript{131} This would only compound the IRS’s current problems. The IRS already is inundated with applications from organizations seeking tax-exempt status to cover up profits.\textsuperscript{132}

\textsuperscript{127} None of the four circuit courts considering the deductibility of Scientologists’ fixed donations contemplated the effect the Eight Circuit’s religious benefit test might have on religious organizations. See infra notes 128-32 and accompanying text.

\textsuperscript{128} See supra notes 92-98 and accompanying text.

\textsuperscript{129} This view appears cynical, but it may not be an extreme possibility. Although most religious organizations do not charge for such activities, the \textit{Staples} rationale might encourage them to do so. Consider a case in which the dollars available for charitable giving are decreased significantly. Cf. 26 U.S.C. § 170(b)(1)(A)(i) (1982) (limiting aggregate amount any taxpayer may deduct as charitable contributions from federal income taxes in given year). Such a case could arise if Congress placed a meager limit on the yearly sum an individual could deduct for charitable giving. Under such circumstances people might not give general donations to a religious body. They probably would be willing, however, to make a “mandatory” donation to receive a wedding, confirmation, or Bar Mitzvah service. It is reasonable to believe that people desire these ceremonies more than generalized participation in church activities.

\textsuperscript{130} This scheme certainly is inimical to the ideas behind the charitable contribution deduction. See supra notes 26-29 and accompanying text.

\textsuperscript{131} Because the first amendment prevents courts from inquiring into the validity of religious beliefs, see supra note 66, the IRS may have its hands tied if the application of the religious benefit test produces further abuses and sham religions.

\textsuperscript{132} See supra notes 19, 22. The IRS weeds out many sham religious organizations in the process of determining an entity’s qualification for tax exemp-
The Staples rationale also disadvantages secular charitable organizations.\textsuperscript{133} Essentially, the religious benefit test reads into the tax code a preference for religious entities.\textsuperscript{134} Under the Eighth Circuit's approach, religious organizations may provide direct benefits to donors, without threatening the deductibility of donations, as long as those benefits are strictly religious.\textsuperscript{135} The Staples rationale, however, does not extend to nonreligious charitable organizations. Secular charitable entities still may not provide any direct benefits to contributors.\textsuperscript{136} This anomaly exists even though neither the language nor the history of the tax code supports any distinction between religious and secular charitable organizations.\textsuperscript{137}

\textsuperscript{133} Cf. 26 U.S.C. §§ 170, 501(c)(3) (1982) (making no distinction between secular and religious entities in defining which charitable organizations can receive deductible donations).

\textsuperscript{134} If courts adopting the Staples rationale were to choose not to accept a preference for religious organizations under the tax code, see infra notes 135-42 and accompanying text, an absurd extension of the Eighth Circuit's test would arise. If courts applied the Staples analysis to nonreligious charitable organizations, they would have to construct a broadly applicable term like strictly charitable benefit. Theoretically, the receipt of such a benefit would not destroy a deduction.

Although assessing whether a benefit is religious in nature may be difficult, determining what would constitute a strictly charitable benefit may prove impossible. Many secular charitable organizations are nonprofit entities that could be run for profit. Cf. Murphy v. Commissioner, 54 T.C. 249 (1970) (adoption agencies); S. REP. NO. 1622, 83d Cong., 2d Sess. 196, \textit{reprinted in} 1954 U.S. CODE CONG. & ADMIN. NEWS 4621, 4830-31 (hospitals); Rev. Rul. 68-432, 1968-2 C.B. 104 (museums); Rev. Rul. 67-246, 1967-2 C.B. 104 (orchestras). Hence, the benefits those organizations can disperse are not charitable by nature. For example, a concert association could exist either as a for-profit organization or as a charitable nonprofit entity. As such, concert admissions are not inherently charitable. See Rev. Rul. 67-246, 1967-2 C.B. 104, 105. Therefore, although one might be able to understand the meaning of a strictly religious benefit, no common understanding attaches to a strictly charitable benefit. The only advantage the latter term has over the former is that "strictly charitable benefit" implicates no constitutional prohibitions. See infra notes 138-42, 124-55 and accompanying text.

\textsuperscript{135} See Staples, 821 F.2d at 1327; supra note 98 and accompanying text.

\textsuperscript{136} See supra notes 40-45 and accompanying text.

\textsuperscript{137} See 26 U.S.C. §§ 107, 501(c)(3) (1982); supra notes 19-20. The First, Fourth, and Ninth Circuits point out that § 170 embodies no distinction between religious and nonreligious charitable organizations. See Miller v. IRS, 829 F.2d 500, 504 (4th Cir. 1987); Graham v. Commissioner, 822 F.2d 844, 849
Furthermore, this preferential treatment accorded religious organizations raises constitutional questions. The establishment clause prohibits the government from endorsing religious groups to the detriment of secular groups. Even when a court acts to protect the free exercise rights of a religious minority, it may not infringe upon the strictures of the establishment clause. The Staples court's religious benefit test prefers religious organizations to nonreligious charitable organizations. This religious preference exhibits the kind of governmental endorsement the first amendment forbids.

The most serious ramification of the Eighth Circuit's analysis is that it necessarily will force courts to draw unconstitutional distinctions between types of religious benefits. The Staples court held that a taxpayer's receipt of a direct but strictly religious benefit in return for a donation to a religious organization does not destroy the deductibility of the donation. Therefore, the religious benefit test at least requires a distinction between religious and secular benefits. The court noted, however, that the IRS should not grant deductions for tuition payments made to parochial schools. Because donors

(9th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1217 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988).

138. These constitutional questions are distinct from the Scientologists' constitutional claims. See supra notes 74, 84. The Scientologists maintained that an application of the traditional "contribution or gift" test violated their free exercise and establishment clause rights by failing to protect their religious liberty.

139. For the text of the first amendment, see supra note 62; see also supra note 64.

140. See supra notes 64-66 and accompanying text.

141. See supra note 67 and accompanying text.

142. The First and Fourth Circuits concluded that the religious preference embodied in the Eighth Circuit's and the Scientologists' analyses violates the establishment clause. See Miller v. IRS, 829 F.2d 500, 506 (4th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1220 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988); supra note 65 and accompanying text; cf. Estate of Thornton v. Caldor, Inc., 472 U.S. 703, 710-11 (1985) (holding that Connecticut statute providing employees with absolute right not to work on their chosen sabbath violated establishment clause); Committee for Pub. Educ. & Religious Liberty v. Nyquist, 413 U.S. 756, 794 (1973) (finding that New York law providing tax benefits to parents of children attending nonpublic schools had primary effect of advancing religion because, among other reasons, benefits of law would flow primarily to parents of children attending sectarian schools). Like the statute in Thornton, the Eighth Circuit's religious benefit test provides an absolute preference for religion. Beyond the statute in Nyquist, all the benefits of the religious benefit test flow to those who contribute to religious organizations.

143. See supra note 98 and accompanying text.

144. See supra note 100.
receive some religious benefit\textsuperscript{145} in a religious education, even if the schooling is primarily secular, the court's decision implied a distinction between strictly religious and partially religious benefits.\textsuperscript{146}

Drawing such lines is inherently troublesome.\textsuperscript{147} A court attempting to distinguish between secular and religious benefits or between strictly and partially religious benefits will run squarely into the establishment clause. That provision prohibits the excessive entanglement of government with religion.\textsuperscript{148} Such entanglement results when courts inquire too deeply into the activities of religious organizations.\textsuperscript{149} The Eighth Circuit's approach necessitates just such inquiries.

The religious benefit test does not provide broad generalizations that courts without further question can apply to groups of religious organizations. For example, the establish-

\textsuperscript{145} See supra note 119. Parents who make tuition payments for their children's education benefit directly as a part of the family unit and only slightly less directly through their children.

\textsuperscript{146} The question then is why grant lesser status for partially religious benefits received in return for a donation. The Staples court gives no reason, but one might exist in the court's view of the stipulations in the case. Because tax-exempt religious organizations operate exclusively for religious purposes, see supra notes 19-22, perhaps the court felt that the return of a strictly religious benefit is so closely aligned with the purposes of the organization as to warrant protection.

The court also posited that denying a deduction to the Scientologists would make the deductibility of payments relative to participation in religious practices dependent upon the mechanism adopted by a church to solicit funds. See supra note 99. The protectionist predilection evident in this statement could have led the court to protect the return of strictly religious benefits but to deny protection to benefits having a secular component.

In either event it is difficult to rationalize the court's distinction between strictly religious and partially religious benefits. To be consistent perhaps the court could have required a partial deduction in proportion to the religious portion of the benefit. This approach, however, would create the same practical and constitutional problems the court's general analysis engenders in situations beyond the facts of the Staples case. See infra notes 147-55 and accompanying text.

\textsuperscript{147} The line between direct and indirect benefits certainly is not clear. See supra notes 35-45 and accompanying text. The tax code frequently requires the IRS to draw fine distinctions. For example, the IRS must distinguish between personal and business expenses. Cf. 26 U.S.C. § 162 (1982) (allowing deduction of ordinary and necessary business expenses from personal income). This line certainly is imprecise. Concerns beyond imprecision, however, arise when drawing the line between strictly religious and partially religious benefits. See supra notes 124-47, infra notes 148-55 and accompanying text.

\textsuperscript{148} See supra notes 64, 66.

\textsuperscript{149} See supra note 66.
ment clause generally allows governmental aid to sectarian colleges, but not to sectarian primary and secondary schools.\textsuperscript{150} With this type of generalization, courts can apply the standard to most factual settings without inquiring into the affairs of the religious organizations. The religious benefit test, by contrast, mandates a case-by-case analysis of the religious nature of a taxpayer’s benefit.\textsuperscript{151} This determination necessarily will require a court to delve into a church’s operations and activities. The first amendment prohibits this kind of entanglement.\textsuperscript{152}

\begin{quote}
150. \textit{Compare} Roemer v. Board of Pub. Works, 426 U.S. 736, 766-67 (1976) (upholding Maryland statute providing grants to any institution of higher education in state as long as funds were not used for sectarian purposes) \textit{with} Meek v. Pittenger, 421 U.S. 349, 366, 372 (1975) (holding unconstitutional two Pennsylvania statutes that provided auxiliary services and instructional materials to sectarian primary and secondary schools). The distinction between these two cases rests on the broad generalizations that churches generally are involved with primary and secondary education more closely than with higher education and that college students usually are less susceptible to religious influences than younger children. \textit{See} Roemer, 426 U.S. at 764-65. Because such generalizations are possible, courts need not inquire into religious activities in the vast majority of such cases. Only the exceptional cases require an analysis beyond the generalizations. \textit{Cf.} Committee for Pub. Educ. & Religious Liberty v. Regan, 444 U.S. 646, 660-61 (1980) (upholding New York statute authorizing use of public funds to reimburse secular and sectarian primary and secondary schools for performing various testing and reporting services mandated by state law).

151. Under the religious benefit test, courts will have to look at each case to determine how religious a benefit is. Although the line might be clear with established churches, the strictly, partially, or nonreligious nature of a return benefit furnished by a unique religion will be difficult for courts to ascertain. In fact, \textit{Staples} may have been just such a case absent the important stipulations. \textit{See supra} note 87. When courts inquire into the activities of religions outside the mainstream, the potential exists not only for establishment clause problems but also for discrimination that threatens free exercise rights. \textit{See supra} note 63 and accompanying text.

152. Both the First and Fourth Circuits agree that delving into the activities of religious organizations to distinguish between the religious and secular benefits provided by those entities would violate the establishment clause. \textit{See} Miller v. IRS, 829 F.2d 500, 506 (4th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1218, 1221 (1st Cir. 1987), \textit{cert. granted}, 108 S. Ct. 1467 (1988). The \textit{Hernandez} court notes the entanglement dangers involved in the government’s monitoring of church records to determine the religious or secular nature of church services, group programs, and pastoral counseling available to contributing members. 819 F.2d at 1218. \textit{Compare} Larson v. Valente, 456 U.S. 228, 255 (1982) (holding that financial reporting obligations imposed on religious organizations that received more than 50% of their contributions from nonmembers created unconstitutional political entanglement) \textit{and} Lemon v. Kurtzman, 403 U.S. 602, 619-20 (1971) (finding that governmental evaluation of parochial school records to determine which expenditures were for secular as opposed to religious education was fraught with dangers of unconstitutional entanglement) \textit{with} Walz v. Tax Comm’n, 397 U.S. 664, 668 (1970) (finding
Not only does the establishment clause, through its entanglement proscription, forbid governmental inquiry into the activities of religious organizations, but both the free exercise and establishment clauses also prohibit the government from inquiring into the religious beliefs of an individual or organization.153 Determining the religious or secular nature of a benefit might not require a detailed examination of religious beliefs. Drawing the line between the strictly or partially religious nature of a benefit, however, would necessitate the detailed scrutiny of religious beliefs.154 To draw this line, a court would have to assess a religious body’s conception of the benefit and the taxpayers’ beliefs regarding the benefit. Both of these inquiries offend the first amendment.155

153. See supra note 66. The First Circuit noted that requiring the “government to distinguish secular from religious benefits would require it to engage in ongoing evaluation of the genuineness of assertedly religious services, thereby entangling itself in church doctrine.” Hernandez, 819 F.2d at 1221; cf. Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440, 451 (1969) (concluding that first amendment prohibits civil courts from interpreting church doctrine and determining importance of those doctrines to religion).

154. Distinguishing between the religious or secular nature of admittedly secular benefits provided by religious organizations (for example, meals) would require no inquiry into religious beliefs. More difficult cases, however, would necessitate some inquiry into religious beliefs. The greater the uncertainty as to the religious nature of the benefit, the more searching the inquiry demanded. Furthermore, the same dilemma would result from any variation on the Eighth Circuit’s test, whether a strictly religious benefit test, a primarily religious benefit inquiry, or some other permutation.

Consider the Scientologist cases absent the stipulations. Because the Church members maintain that they receive a strictly religious benefit, a reviewing court would need to assess the validity of that claim under the religious benefit test. The religious nature of auditing and training sessions is not apparent. Therefore, a court would have to delve into the Church’s practices and members’ beliefs to discover the nature of the sessions. This kind of inquiry necessarily implicates the doctrines of Church members and the sincerity of their beliefs. The first amendment forbids such an inquiry. See supra note 66.

155. Given the stipulations, the Scientologist cases presented little danger of entanglement. See Hernandez, 819 F.2d at 1218. Because the IRS had stipulated that auditing and training are religious practices, see supra note 87, determining the strictly versus partially religious nature of these services was unnecessary. The courts did not need to search Church records or inquire into members’ beliefs.

The only potential for entanglement involved the government’s determination of the fees charged by the Church for auditing and training sessions. Under the Eighth Circuit’s test, such an assessment would help to determine the religious or secular nature of the transaction. See supra note 92 and ac-
c. The Eighth Circuit's Misinterpretation of the Policies Underlying Section 170

The Eighth Circuit's faulty approach stems from the court's misinterpretation of the policies behind section 170. The court concluded that the policies of section 170 are absolute with respect to religious organizations. Noting that the "contribution or gift" provision should be construed in a manner sensitive to religious practices, the court stressed that the religious observances of any faith are presumed to be of spiritual benefit to the general public. Given this controlling presumption, it is not difficult to see how the court could place too much significance on the government's stipulation to the Church's tax-exempt status and could carve a new exception to traditional "contribution or gift" analysis for strictly religious benefits.

In drafting section 170, however, Congress did not intend to adopt the absolute presumption the Staples court posited. Congress intended to balance the government's need to collect taxes against the religious organization's right to remain tax-exempt. The cases thus paralleled Walz v. Tax Comm'n, 397 U.S. 664 (1972), in which the Court held that the assessment of the property values of charitable organizations' land involved negligible entanglement. Id. at 698.

Under the traditional § 170 inquiry into the directness of the return benefit to the donor, nothing more than the superficial entanglement involved in Walz normally would be necessary. See Hernandez, 819 F.2d at 1221 ( remarking that § 170 requires merely administrative contact rather than doctrinal entanglement). In almost all cases, courts can ascertain the directness of a return benefit from the fact that a taxpayer gives value for it. In addition, because the established inquiry does not touch on a religious question, i.e., the religious nature of the benefit, there is little danger of delving into religious beliefs.

Although there are no line-drawing problems under the establishment clause in applying the religious benefit test to the Scientologists cases, a less clear case might exist. For example, suppose a religious organization uses hallucinogenic drugs as part of a ritual or ceremony and charges its members fees for the allegedly religious "service" which would include the cost of the drugs and the administration of the ceremony. No doubt, the organization would conceal information about the drug use.

Members of the church, however, might wish to deduct their payments to the church as charitable contributions. Because the church would shroud the nature of the ceremony and the fee arrangement in secrecy to avoid state and federal drug laws, the government would risk excessive entanglement if it attempted to assess the religious nature of the benefit received. Cf. Larson v. Valente, 455 U.S. 228, 255 (1982) (holding that state determination of whether religious organization received more than 50% of its donations from nonmembers created unconstitutional entanglement).
trary to the court's assumptions, not all activities in which religious organizations engage benefit the general public. A deduction should be allowed when a religious or secular charitable organization uses a donation for its broad public purposes.\textsuperscript{158} If a charitable organization provides a direct benefit to a donating individual, including a strictly religious benefit, the broader public is not served and the individual should not enjoy a tax deduction.\textsuperscript{159}

2. Protecting the Policies Behind Section 170: Scientologists' Fixed Donations Under the Directness of the Benefit Test

Under the directness of the benefit test and the policies it protects, courts must deny deductions for Scientologists' fixed donations. The directness of the benefit test does not draw lines based on the religious or nonreligious nature of the benefit a taxpayer receives in return for a donation.\textsuperscript{160} Rather, the directness test focuses on whether a taxpayer receives a direct and individualized benefit; whether or not religious, or merely indirect benefits that are shared with the broader community.\textsuperscript{161} If a taxpayer receives a direct return benefit, the court should determine that her donation is not fully deductible.

In making this determination, courts should not find determinative the mandatory nature of a donation, its set amount, or the method of payment.\textsuperscript{162} These inquiries are only tangentially relevant to the determination of whether a return benefit is direct or indirect. For example, a church might require the payment of set dues by its members as a precondition to membership. If the members receive return benefits only as members of a congregation.

\textsuperscript{158} See supra notes 26-30 and accompanying text.
\textsuperscript{159} See supra notes 28-30 and accompanying text. This principle applies equally to religious organizations and the benefits they convey. See supra notes 52-61 and accompanying text.
\textsuperscript{160} See supra notes 52-61 and accompanying text.
\textsuperscript{161} See supra notes 26-61 and accompanying text.
\textsuperscript{162} The Staples court looked at these factors but considered them invalid. See 821 F.2d at 1327. The court was correct in finding that these factors are not of paramount importance. The First and Ninth Circuits seemed to have trouble with these elements, however. See Graham v. Commissioner, 822 F.2d 844, 850 (9th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1227 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988). The IRS has held that pew rents, mandatory church dues, and building fund assessments are deductible. Rev. Rul. 70-47, 1970-1 C.B. 49. The Hernandez court doubted that these rulings would stand under its analysis. 819 F.2d at 1227. These holdings, however, are proper under the directness of the benefit test because the donating taxpayers received return benefits only as members of a congregation.
the larger congregation, the payments should be deductible. Because such donors receive no direct benefits, the church can use the full amount of the donations to support the organization's broader purposes.

Unlike the hypothetical case, members of the Church of Scientology receive direct religious benefits in proportion to their fixed donations. Scientologists may participate in auditing and training only if they pay a prescribed fee for each session. The benefits of auditing and training thus accrue directly to the members who pay to participate in those sessions. Auditing and training sessions are unlike the general

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163. See supra notes 3, 77.
164. None of the three circuits that disagreed with the Staples opinion explicitly focused on the directness of the benefit test. See supra notes 79-84 and accompanying text. Of the three courts, the Fourth Circuit came closest to considering the directness test and the policies it protects. See Miller v. IRS, 829 F.2d 500, 505 (4th Cir. 1987). The slight deviations of the three circuits and the tax court from the directness test may seem trifling because all four courts reached results consistent with the test. A closer look, however, shows the fallacy of that belief. An analysis that focuses on the intentions of the taxpayers, see supra note 50, or the fixed and mandatory nature of a donation, see supra note 162 and accompanying text, does not necessarily protect the policies behind the charitable contribution deduction. See supra notes 26-30 and accompanying text.
165. See supra note 3 and accompanying text.
166. See supra notes 3, 77. The Eighth Circuit maintained that the Church's fee system does not change the strictly religious nature of the return benefit. See Staples, 821 F.2d at 1327. The court found incongruous the placing of a market value on a religious practice. Id. The Staples court believed that the parties' stipulations required the conclusion that fixed donations do not represent market prices set to reap profits in a commercial venture. Id. at 1328; supra note 87.

Although the Eighth Circuit may be correct in finding that the Church is not a commercial entity and that fixed donation values do not represent market prices, the court read too much into the stipulations at that juncture. Even if the "fees" charged for auditing and training sessions are not market prices in the commercial sense, those fees do provide a measure of the value of the services to Church members. See Miller v. IRS, 829 F.2d 500, 503-04 (4th Cir. 1987). It is this correlation and the corresponding suggestion of a direct return benefit that is significant, not the commercial nature of the transaction. To support its proposition that the Church is not a commercial entity, the court cites Murdock v. Pennsylvania. That case is inapplicable, however, because it arose in an entirely different context. 319 U.S. 105, 111 (1943) (holding that sale of religious literature by Jehovah's Witnesses did not transform their evangelism into commercial enterprise for purposes of first amendment's commercial speech doctrine).

In addition, the Eighth Circuit was concerned that the test applied by the tax court and the other circuits would make the deductibility of payments made for strictly religious practices depend on the method or mechanism adopted by the church to solicit contributions. See Staples, 821 F.2d at 1326-27. Courts, however, focus not on the mechanism for solicitation, but on the di-
benefits a person receives in return for collection plate contributions to a church. 167 Scientologists do not receive indirect benefits as a part of a whole congregation. 168 Rather, auditing sessions are one-to-one exchanges between a trained Scientologist and another member of the Church. 169 Training sessions likewise are directed at groups of individuals who pay for the sessions, not at a broader congregation. 170 Because Scientologists receive direct benefits, in the form of auditing and training sessions, in return for their fixed donations, their payments do not constitute contributions or gifts under section 170 and thus should not be deductible. 171

The basic policies underlying the charitable contribution deduction support this conclusion. Donations to religious and rectness of the return benefit a donor receives. A church might require the payment of a mandatory fee from its members but only provide generalized congregation-wide benefits. See supra note 162 and accompanying text. In that case the fee payments would be deductible.

167. See supra notes 1-2, 56-57 and accompanying text.

168. Courts focus on the primary or immediate benefit resulting from the donation. See supra note 47. Although the whole congregation of the Church of Scientology eventually might benefit from the auditing and training donations, the individual members receive the primary and direct benefit in the form of religious services. When churches perform confirmations and Bar Mitzvahs in return for donations, see supra note 61, the congregation may benefit in the long run. That conclusion is even more likely given that many of those ceremonies take place before a gathering of the congregation. See supra note 122 and accompanying text. Despite that fact courts have found that the direct benefits flowing to the individual recipients of those services make their donations nondeductible.

169. See supra note 1.

170. See supra note 2-3. The Church itself, in the enrollment form provided to new auditees, states that the “benefits obtainable from Church services...are personal and are experienced by the individual himself or herself.” Graham v. Commissioner, 822 F.2d 844, 850 (9th Cir. 1987).

171. The taxpayers in the four Scientologist cases made no alternative claim that they received only nominal returns, i.e., that the value of their donations exceeded the value of the services they received in return. See Miller v. IRS, 829 F.2d 500, 504 (4th Cir. 1987); Hernandez v. Commissioner, 819 F.2d 1212, 1216 (1st Cir. 1987), cert. granted, 108 S. Ct. 1467 (1988); supra notes 49-51 and accompanying text. The Scientologists thus left the courts only two options from which to choose to label their return benefits: indirect benefits as received with other members of the congregation, or direct and commensurate benefits. See supra notes 31-61 and accompanying text.

Even if the Scientologists had maintained that they received only nominal benefits, their case would have been weak. See supra notes 50-51 and accompanying text. The Church members expected to receive religious services of commensurate value in return for their fixed donations and thus could not argue that they harbored donative intentions. See, e.g., Graham, 822 F.2d at 850 (Katherine Jean Graham stated before tax court that she “expected to get particular religious services in exchange” for her fixed donations).
charitable organizations receive preferred tax status only when those payments benefit the general public.\textsuperscript{172} Because the Church of Scientology uses its members' donations to provide auditing and training services, the Church cannot use the donations for its broader, society-oriented purposes. By providing a direct return benefit, the Church makes the fixed donations of its members nondeductible. As this analysis makes clear, the \textit{Staples} court's assumption that all religious observances primarily benefit the general public is erroneous.\textsuperscript{173}

CONCLUSION

Members of the Church of Scientology claim they may deduct from their federal income taxes, as charitable contributions, fixed donations made to the Church in return for auditing and training sessions. In upholding such deductions, the Eighth Circuit created a novel exception to the traditional test for assessing deductibility under section 170 of the tax code. The \textit{Staples} court held that the receipt of a direct but strictly religious benefit in return for a donation does not destroy deductibility. This religious benefit test calls into question previous conclusions regarding the deductibility of donations to religious organizations, creates incentives for religious organizations to charge for services, disadvantages secular charitable organizations, and runs afoul of the establishment clause. Congress established the charitable contribution deduction because it believed that charitable donations benefit society. Under an approach consistent with this policy, a taxpayer makes a deductible donation only if she receives in return merely indirect benefits that are shared with the community. If a taxpayer receives a direct benefit, whether religious or non-religious, in return for a donation, the charitable organization cannot use all of the funds for the entity's broader public purposes. In such a case, the donation must not be fully deductible. The religious nature of the return benefit must not affect a court's analysis. Because members of the Church of Scientology receive direct benefits in the form of auditing and training services in return for their fixed donations, those donations should not be deductible.

\textit{David C. Linder}

\textsuperscript{172} See supra note 27 and accompanying text.\textsuperscript{173} See supra notes 93-96, 156-59 and accompanying text.