

Advocates of 'Time Banks' Challenged by Unresolved Tax Questions
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Barterlike arrangements known as "time banks," though intended as altruistic community-building, raise a number of unresolved questions about whether the services exchanged should be taxed and whether some organizations that promote them are misstating their tax implications.

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In lean economic times, industrious people find ways to get needed goods and services without spending money. An example of such economic magic is the rising use of "time banks."

Time banks are organized exchanges conceived around a "pay-it-forward" system in which one member performs a service for someone in the community and in return receives the right to another valued service to be delivered at some point in the future.

Such barterlike arrangements, though intended as altruistic community-building, raise a number of unresolved questions about whether the services exchanged should be taxed, what sort of guidance the IRS has released about time banks, and whether some organizations that promote time banking are misstating their tax implications.

"Need another reason to join a time bank?" asked a July 1 article in the Midwest Airlines' in-flight magazine. "Uncle Sam doesn't want your time dollars." (See <http://mymidwestmagazine.com/2009/07/01/time-is-on-your-side/>)

In the frequently asked questions on the Web site of TimeBanks USA, a section 501(c)(3) organization that develops and supports a network of time banks, the answer to whether time-bank exchanges are tax exempt is unequivocal: "Yes, and this is another reason why Time Banking is different than bartering: it is not taxable. In normal bartering, you have to declare the value of the goods and services you receive to the IRS. We have an IRS private letter ruling that Time Dollar exchanges are tax-exempt."

In fact, the Service has issued little guidance on time banks, except for a few letter rulings in response to individual cases. What's more, the IRS reserves the right under section 61 to determine whether members are indeed earning taxable income through the exchanges, said Adam Chodorow, a professor at the Sandra Day O'Connor School of Law at Arizona State University. An IRS letter ruling he has seen "expressly says we are not saying that there is no income to the person engaged in this," he told Tax Analysts. "If I were advising the time banks, I would tell them you cannot say anything about what the IRS thinks about these

deals."

Born of Altruism

Time banks, which currently boast about 20,000 members in perhaps 70 organizations nationwide, are the brainchild of Washington attorney Edgar S. Cahn, who dreamed up the time dollar concept and launched the first time bank in 1987.

The alternative currency Cahn created cannot be converted into real cash, and each time dollar earned per hour carries the same value regardless of the monetary value of what is exchanged, according to time bank proponents. In other words, an hour that a time bank member spends knitting a sweater for someone could be exchanged for an hour of someone else's time to provide hospice care for a sick relative.

To develop and support a network of time banks, Timebanks USA is about "valuing persons in the world who too often are totally undervalued," Christine Gray, Timebanks USA executive director and Cahn's spouse, said. "Their time is undervalued; they earn minimum wage, or they don't earn anything at all," she said. "If we use this currency, we can enliven their world in the same way that money enlivens the world of pure economic activity."

Over the years, a handful of time banks have asked the IRS to address whether they should be classified as barter exchanges under section 6045 and, if so, be subject to third-party reporting requirements similar to those affecting brokerage firms.

In 1995 the IRS issued a letter ruling, often cited by TimeBanks USA, stating that the time banks are "a means for informal exchange of similar services on a noncommercial basis and do not result in the creation of contractual rights and obligations among members for the exchange of property or service." (For LTR 9608009, see /Doc 96-5473 /or/ 96 TNT 39-54 /96 TNT 39-54: IRS Letter Rulings (LTR) <<http://services.taxanalysts.com/taxbase/archive/tnt1996.nsf/86255f19006ce90385255b580068db3a/52c1fdd6b84dcf97852563640056a98b?OpenDocument>>./.)

In distinguishing the time banks from barter exchanges, the ruling noted that all services by time-bank members receive a point value based on the number of hours of service, there is no contractual right between members to receive services, and the time bank did not place any limits on when services must be received.

But in a disclaimer of sorts, the ruling's last paragraph said that "no opinion is expressed about the tax consequences of the program under any other provision of the Code" and that "no opinion is expressed concerning whether a member earns income as a result of the member's participation in the program."

That distinction between the transactions and the banks themselves is seen as crucial, according to those who study the issue. Theodore P. Seto, a professor at the Loyola Law School, Los Angeles, said there is a significant difference between whether the bank itself is subject to

reporting requirements under section 6045 and whether the transactions engaged in are taxable transactions. "The one thing I am clear about is that these private letter rulings don't address that question," Seto said. "So to the extent that these time banks are advertising that the IRS has come to some kind of conclusion, I think they are overstating the situation."

Gray, when asked by Tax Analysts about the criticism of her group's advertising, agreed that "the statement is more declarative than it should be." When the question arises at training seminars or in its online forum, she said, TimeBanks USA advises people that the letter rulings are directed only at the taxpayer who requested it from the IRS. Gray added that TimeBanks USA has received "informal advice" from attorneys that "the private rulings are a good guide so long as the time banks are mission-driven in the way they traditionally have been."

Lesley Jones, a creative director at the Hour Exchange Portland time bank in Maine, said her time bank advises people who want to start new time banks that they should not assume they are covered by another's private letter ruling. "We had a problem a few years ago where another time bank had gotten a copy of our ruling and posted on their Web site as the gospel, and we actually had to call to tell them to take it down because it was misleading," Jones said.

Jones said they advise people who can afford to get an IRS ruling to do so. "It strengthens the whole movement," Jones said. But it's not cheap. Hour Exchange Portland paid \$12,000 "between attorney fees and everything else" to get their ruling, she said.

Are Time Dollars Taxable?

Time bank members who perform a service will receive a time dollar, but the members have no assurance they will get anything back that they might actually want, said Seto. Although getting something in return is not enforceable, Seto added, the question is not whether the member has a legal, enforceable right to obtain something, but rather whether "as a practical matter, do we get what we want in exchange?"

That question was established in the case of *Flamingo Resort, Inc., v. United States*, /No. 80-5318, 664 F. 2nd 1387 (9th Cir. 1980), in which the court determined that gambling markers represent taxable income upon their accrual.

"That's going to be a factual question," Seto said. "And the fact that a fair number of people never make any claims from these time banks cuts against its taxability as an accrual method question."

Because a time dollar could be used for any number of things, Seto added, there is no reasonable way to value under the accrual method what the credit is worth. Also, the credits can't be converted into cash, so it's not a cash equivalent under cash method rules. It is also not constructively received "because it's not something laying there on the table to be picked up," Seto said. "You have to go to somebody, you have to find somebody to do it, you have to negotiate -- that's not constructive receipt, I think."

But others wonder whether a member who receives a service is receiving taxable income. An accountant could now value the time dollar's worth based on the type of service received, and there is no longer a question of constructive receipt under the cash method of accounting, but it doesn't answer the question whether it should be taxed, Seto said.

Under a well-known theory developed by economists Robert M. Haig and Henry C. Simons, hitching a ride to work with a friend or agreeing with your spouse that you will wash the dishes if the other spouse pays the bills each month is technically income, but nobody would report it to the IRS. But Haig-Simons is not the law.

"We've got this problem in that the theory that scholars use and, indeed, some courts have used to determine whether there is income, doesn't work when taken to extremes," Seto said. "Where do we draw the line? I think the answer is: No one knows."

Are Time Dollars Gifts?

The debate over taxing time dollars calls to mind an old Supreme Court case involving a man who gave a Cadillac as a thank-you to another man who had given him a business tip. In *Commissioner v. Duberstein*, 363 U.S. 278 (1960), the court said the man's motive was not "disinterested generosity," which characterizes a gift, but a desire to compensate for past customer references or to encourage future references.

As Chodorow points out, the case doesn't fully answer the question. "You can always work for free; you can always do a favor for somebody," he said. "It's not going to be taxable to them; you'll have no income. But what happens when you do a favor for somebody and they do you a favor back?"

The question, Chodorow continued, "Is when does that quid pro quo get to be strong enough that you say that what's going on here is a taxable exchange, not a mutual exchange of favors? The problem is that on the continuum between the two, it's impossible to draw a line."

When Private Businesses Join

The Midwest Airlines magazine article, "Time Is On Your Side," says businesses are starting to join time banks. In the article, the executive director of a business improvement district in New York explained that joining the Visiting Nurse Service of New York Community Connections TimeBanks USA helps businesses market to new customers. A pharmacy owner spoke of all the things that need to be done around his store -- such as changing a faucet or fixing a doorknob -- that he can have done through the time bank. "These are things that my employees can't do, but someone in the time bank probably can," the pharmacy owner said.

But the fact that businesses are now joining raises red flags for many law professors. "Here we have a business itself participating in the time bank, and it's much harder for me to believe that this is being

done on some kind of altruistic, community-service basis," Seto said.

Chodorow agreed. Once a member starts saying "'Look, this is what I do for a living' and then somebody comes and says, 'I'm going to provide it to you for free,' and you are going to provide something you do for a living for free, then the pretend game that these are just exchanges of favors and not substitutes for commercial transactions disappears," he said.

Gray, by contrast, said the nurses' time bank has an ambition to expand time banking throughout the city to meet "the needs of vulnerable people. And can businesses put into that pot as well as regular people? Yes, of course they can. Why would they not?" she said. "That would be crazy to put a prohibition against businesses. The bottom-line value has been that there is goodwill generated by the fact that businesses are contributing into a rich and ever-deepening commons of resources."

Gray added that as time banks grow and new ones start, "some members of a time bank somewhere in the country, either individuals or businesses, may choose to use time banking in a different spirit."

Likely IRS Response

Steve Johnson, a professor at the William S. Boyd School of Law at the University of Nevada, Las Vegas, and a former senior attorney with the IRS Office of Chief Counsel, said that if the IRS were to take on the taxability of time bank exchanges, it would have to consider whether pursuing a case against a time bank was worth the resources spent and whether it would be efficient to actually collect taxes from members. "This is not the thing that is going to balance the federal budget," Johnson said. "This isn't a huge amount of money." But if the IRS were to pursue a case, they would be wise to select a particularly egregious example of a time bank flouting the rulings, he said.

Chodorow agreed, saying, "I'd take the most abusive one or two cases, make it public, and trumpet* *to the high heavens."

Seto noted that it is doubtful that a time bank would even contest the IRS action because time banks do not have the money to fight it. Instead, the time banks would enter into an agreement with the IRS that certain procedural changes will be made, Seto said. "If I were the IRS, that is how I would try to crack down on perceived abuse."

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