

REPORT OF THE COUNCIL ON ETHICAL AND JUDICIAL AFFAIRS[□]

CEJA Report 7-I-00

Subject: Support for the Gift of Life Tax Credit Act
(Resolution 221, A-00)

Presented by: Herbert Rakatansky, MD, Chair

Referred to: Reference Committee on Amendments to the Constitution and Bylaws
(Nelson G. Richards, Jr., MD, Chair)

1 Resolution 221 (A-00), “Support for the Gift of Life Tax Credit Act,” introduced by the Utah Delegation,
2 instructed the AMA to support the passage and implementation of the “Gift of Life Tax Credit Act” and
3 similar legislative initiatives that are consistent with AMA Policy H-370.979 (AMA Policy Database),
4 “Financial Incentives for Organ Procurement.” The resolution was forwarded to the Council on Ethical
5 and Judicial Affairs. This report is submitted for information to the House of Delegates.

6 7 Introduction

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9 The Council offers the following report to assess whether the Gift of Life Tax Credit Act is consistent
10 with CEJA policy. The report begins with a description of Opinion 2.15, “Financial Incentives for Organ
11 Procurement,” and provides a summary of the proposed legislation, “Gift of Life Tax Credit Act”
12 [Appendix 1]. Finally, it evaluates the Act in light of current AMA policy. A more detailed assessment
13 of financial incentives and organ donation can be found in an earlier CEJA report, “Financial Incentives
14 for Organ Procurement: Ethical Aspects of Future Contracts for Cadaveric Donors.”¹

15 16 Current AMA Policy on Financial Incentives for Organ Donation

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18 AMA Policy supports the implementation of a pilot program to study the influence of financial incentives
19 on organ donation rates.² However, these financial incentives should comply with the following
20 conditions:

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- 23 1) Only the potential donor, and not the donor's family or other third party, may be given the
24 option of accepting financial incentives for cadaveric organ donation. In addition, the
25 potential donor must have been a competent adult when the decision to donate was made, and
26 the donor must not have committed suicide.
 - 27 2) Any incentive should be of moderate value and should be the lowest amount that can
28 reasonably be expected to encourage organ donation. By designating a state agency to
29 administer the incentive, full control over the level of incentive can be maintained.
 - 30 3) Payment should occur only after the organs have been retrieved and judged medically
31 suitable for transplantation. Suitability should continue to be determined in accordance with
the procedures of the Organ Procurement and Transplantation Network.

[□] Reports of the Council on Ethical and Judicial Affairs are assigned to the Reference Committee on Constitution and Bylaws. They may be adopted, not adopted, or referred. A report may not be amended, except to clarify the meaning of the report and only with the concurrence of the Council.

- 1 4) Incentives should play no part in the allocation of donated organs among potential transplant
2 recipients. The distribution of organs for transplantation should continue to be governed only
3 by ethically appropriate criteria relating to medical need.³
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5 Although the proposed Gift of Life Tax Credit Act does not go into detail concerning the implementation
6 of its program, it is feasible that these conditions could be met.⁴
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8 Proposed Legislation

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10 In March 2000 Representative Hanson of Utah introduced the “Gift of Life Tax Credit Act of 2000.”⁴
11 The Act proposes an amendment to the Internal Revenue Code of 1986 which would allow eligible
12 individuals to receive a \$10,000 tax credit for the taxable year in which the individual’s death occurred.
13 The Act goes on to define an eligible individual as any individual whose organs are donated at death for
14 transplantation under a program approved by the Secretary of Health and Human Services.⁴
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16 Analysis

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18 Based on the National Organ Transplant Act of 1984, the buying and selling of organs is strictly
19 prohibited.⁵ Thus, current laws would have to be amended to implement any form of financial incentive
20 or even to initiate a pilot program in this area.⁶ Notwithstanding the current legislative status, certain
21 provisions of the Gift of Life Tax Credit Act coincide with AMA policy. Specifically, the definition of an
22 eligible individual precludes participants whose organs are judged unsuitable for transplantation from
23 receiving the tax credit, which is in accordance with item three of CEJA Opinion 2.15, “Financial
24 Incentives for Organ Donation.” In concurrence with item two of Opinion 2.15, the distribution of these
25 incentives would be administered by the state, allowing for control over the amount of the incentive.
26 Finally, the Act does not affect any current allocation programs.
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28 While the intent of the Act coincides with AMA policy to encourage organ donation, the only provision
29 of Opinion 2.15 that the Act does not address is the idea that only the potential donor may accept an
30 incentive for organ donation. According to AMA policy, the donor’s family or a third party would not be
31 able to receive this option when the decision to donate is made by a competent adult. It is the
32 understanding of the Council that such a provision could be included in the definition of an eligible
33 individual without significantly influencing the intent or implementation of the Act.
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35 Conclusion

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37 Because the provisions of the Gift of Life Tax Credit Act are not specific enough to address item one of
38 Opinion 2.15, the Council does not find the Act to be in accordance with AMA ethics policy.
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40 While the Council supports the concept and intent of the Gift of Life Tax Credit Act, in order for the Act
41 to coincide with AMA ethics policy, it needs more detail to address current inconsistencies with AMA
42 policy. Specifically, the Act needs to indicate who may give consent for the potential tax credit. Without
43 such a specification, CEJA recommends that the AMA seek such improvement in legislation.
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Appendix 1

HR 4048 IH

106th CONGRESS
2d Session
H. R. 4048

To amend the Internal Revenue Code of 1986 to allow a refundable credit to individuals who donate their organs at death.

IN THE HOUSE OF REPRESENTATIVES

March 21, 2000

Mr. HANSEN (for himself, Mrs. CUBIN, Ms. ROS-LEHTINEN, Mr. CANNON, Mr. WOLF, and Mr. WELDON of Florida) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to allow a refundable credit to individuals who donate their organs at death.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Gift of Life Tax Credit Act of 2000'.

SEC. 2. REFUNDABLE CREDIT FOR ORGAN DONATIONS.

(a) IN GENERAL- Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesignating section 35 as section 36 and by inserting after section 34 the following new section:

'SEC. 35. ORGAN DONATIONS.

'(a) IN GENERAL- In the case of an eligible individual, there shall be allowed as a credit against the tax imposed by this subtitle the amount of \$10,000 for the taxable year which includes the date of the individual's death.

'(b) ELIGIBLE INDIVIDUAL- For purposes of this section, the term 'eligible individual' means any individual if any of such individual's organs is donated at death for transplantation under a program approved by the Secretary of Health and Human Services.'

(b) CONFORMING AMENDMENTS-

(1) Paragraph (2) of section 1324(b) of title 31, United States Code, is amended by inserting before the period ', or from section 35 of such Code'.

(2) The table of sections for subpart C of part IV of subchapter A of chapter 1 of such Code is amended by striking the last item and inserting the following new items:

'Sec. 35. Organ donations.

'Sec. 36. Overpayments of tax.'

(c) EFFECTIVE DATE- The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

END

References:

¹ Council on Ethical and Judicial Affairs, American Medical Association. Financial Incentives for Organ Procurement: Ethical Aspects of Future Contracts for Cadaveric Donors. *Arch Intern Med.* 1995 Mar 27; Vol. 155.

² House of Delegates, American Medical Association. H-370.979: Financial Incentives for Organ Procurement. AMA Policy Compendium Database available at <http://www.ama-assn.org>.

³ Council on Ethical and Judicial Affairs, American Medical Association. Opinion 2.15: Financial Incentives for Organ Donation. *Code of Medical Ethics 2000-2001*.

⁴ H.R. 4048; Gift of Life Tax Credit Act of 2000. United States House of Representatives, 106th Congress. Can be accessed at: <http://thomas.loc.gov/cgi-bin/query/C?c106:./temp/~c106jVdaqk>.

⁵ National Organ Transplant Act, Pub L no. 98-507, 3 USC g301.

⁶ United Network For Sharing Organs Ethics Committee, the Payment Subcommittee. “Financial Incentives for Organ Donation. Available at: <http://www.unos.org/resources/bioethics%5Fwhitepapers%5Ffinance.htm> last visited July 27, 2000.