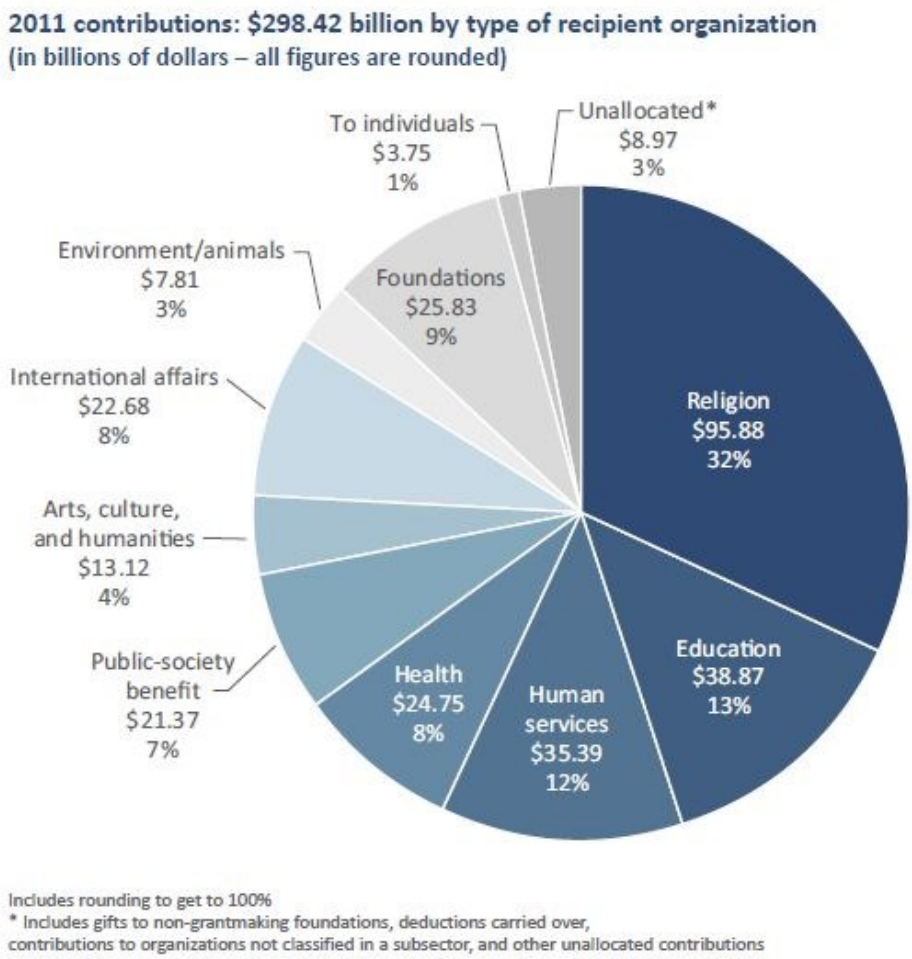

What is a "contribution or gift" within the meaning of § 170(c)?

Recall from Chapter 7 the *Duberstein* definition of a "gift" for purposes of the § 102 *exclusion* from § 61 Gross Income by the gift recipient: a transfer made by the donor out of "detached and disinterested generosity … out of affection, respect, admiration, charity or like impulses," as opposed to one proceeding primarily from "the constraining force of any moral or legal duty" or from "the incentive of anticipated benefit of an economic nature."[95] The *Duberstein* Court also said that the intention of the donor controls this inquiry.[96] Are the words "contribution or gift" in § 170(c) interpreted similarly? Prior to the Supreme Court's 1986 decision in *United States v. American Bar Endowment*,[97] lower courts had disagreed about whether § 170 contained an "intent" test similar to § 102.

In *American Bar Endowment*, taxpayers purchased life, health, accident and disability insurance policies through insurance companies contracting with the American Bar Endowment (ABE), a § 501(c)(3) organization eligible to receive contributions that are deductible under § 170. Because of the favorable mortality and morbidity profiles of the member-contributors, premiums in excess

[95] Comm'r v. Duberstein, 363 U.S. 278, 285 (1960).
[96] *Id.* at 286.
[97] 477 U.S. 105 (1986).