

# Money Soup:

## A Legal Guide to Bartering, Giving, and Getting Stuff without Dollars

By Janelle Orsi,  
Co-Director, Sustainable Economies Law Center  
[www.TheSELC.org](http://www.TheSELC.org)

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*PART 1: [Let's Make Money Soup!: How to Barter, Give, and Get Stuff](#)*

*PART 2: [How to Open a Gift \[Economy\]: Legal Nuts and Bolts](#)*

*PART 3: [The Barter Starter Legal Guide](#)*

There are things we do for money and things we do for free. And then there is everything in between. In that between space, there is a growing and exciting world of barter, work exchange, gift circles, mutual aid societies, time banks, local currencies, and other modes of transacting that don't use regular money. These transactions form a huge component of the "sharing economy," the "third economy," the "sustainable economy," or whatever you may call this "new economy."

I thought it would be a fun and important project to sort out the tax, business, and labor law implications of these "in between" transactions. However, when I got knee deep into the research, I found that things got rather soupy.

Explaining legal concepts in an interesting and vivid way can be a challenge, which is why I've chosen to construct this article around a more familiar concept: soup. There are a couple ways of making soup that fit clearly into defined legal frameworks:

- 1. Soup for Money:** If I were to own a gourmet soup restaurant, the tax, business, and labor law questions are fairly straightforward. The income I make would be taxable and sales tax would apply (in most states). I would be subject to health and safety laws, permitting requirements, and other business regulations. The people who help out in my kitchen would be legally considered employees.
- 2. Soup for Me:** On the other hand, when I make a pot of soup at home for myself and my partner, neither I nor my partner pay tax on it. (The value of the soup we create ourselves is what's called "imputed income," but the IRS doesn't ask us to pay tax on it.) I don't need special business permits, and when my partner helps chop veggies, she does not become my employee.

Once we go beyond these straightforward examples, making soup is definitely not cut and dry.

### Rule Soup

Before I dish up more soup examples, I should summarize a few laws. And even before that, I should warn that having a vast body of laws and regulations doesn't mean that we actually know how to interpret them. Courts wrestle with the meaning of laws on a case-by-case basis, and that's where we

learn how to interpret laws. When things end up in court, it's generally because there's a lot of value at stake in the case, like in a car accident lawsuit or major tax evasion case.

But how often do you think the IRS brings people to court over tax owed on a free guitar lesson received in exchange for babysitting? Definitely not often enough for us to have much case law to go on, or to know how to interpret the rules. So we are left with interesting grey areas.

For example, we have some general rules about income, barter, and gifts, and they go roughly like this:

1. **Income:** [With some exceptions,] gross income is taxed, whether it comes in the form of money, property, or services. (Treas. Reg. § 1.61-1)
2. **Barter:** The value of something you receive through barter is income, and is therefore taxed, [with some exceptions]. (See IRS Publication 525)
3. **Gifts:** Gifts are generally not counted as part of gross income, and are therefore not taxed for the recipient, [with some exception]. (26 USCS § 102)

In sum, barter is taxed and gifts are not. But in an informal economy, there are infinite ways to give and receive, and the line between barter and gifting could be unclear.

Furthermore, it's hard to know how far the taxing of barter income actually extends. The IRS rule on barter, as written, appears to tax *any* good or service you receive in exchange for *any* other good or service. In practice, however, it's probably not such a blanket rule. The IRS doesn't seem to concern itself with one-time, casual, non-commercial exchanges of goods or property. Administratively, it would be a hassle both for taxpayers and the IRS to report the plums I gave my neighbor in exchange for his figs. Unfortunately, it's hard to say at what point a barter arrangement has become sufficiently formal, commercial, or regular to be something that you should report.

A couple other questions that can get muddled in the new economy are:

1. **What is a business?** At what point do the favors you do for others make you a business owner? In the new economy, we will likely have an abundance of new micro-enterprises, cottage industries, and even smaller "nano-enterprises," many of which could get started by accident. When there's no money involved, there could be a vast grey area between having a business and not having one. For example, if you lend your car to a friend, you aren't a car rental company. But if you lend your car frequently in exchange for some goods and services, have you become a car rental company? It's important to know the difference, because once you are classified as a car rental *business*, suddenly you'll need to know about special permits, insurance, and legal regulation galore.
2. **What is an employee?** At what point do the services you provide to others make you their employee? As a general rule, if you do work for someone and they control *what* work you do and *how* you get it done, chances are you should be treated as an employee. Having employees comes with a list of obligations: pay minimum wage and overtime, pay payroll taxes, carry workers compensation insurance, adhere to OSHA standards, and so on. It's illegal for a business to avoid these obligations by using unpaid or "volunteer" labor, unless the person providing the labor could be legally classified as an intern or independent contractor. Although the practice is

widespread, “volunteering” on an organic farm in exchange for free produce could mean the farmer is violating wage and hour laws, for example.

## Soup Gone Wild

Let’s look at how all these rules play out using other scenarios in which I make soup:

1. **Soup Parties:** What if I started throwing a fabulous monthly soup party for my friends? It’s all for fun and for free, although my friends sometimes show their appreciation by inviting me over for dinner, or by bringing dessert to my party. For the most part, these activities fall under the category of “gift,” and there will be few legal issues to worry about. I haven’t become a restaurant and the dessert my friend brings probably won’t be taxable to me as “income.” (However, even while this seems like an unregulated realm, I’ve been surprised to learn that in some cities there are laws that limit how many people you are allowed to feed for free.)
2. **Gift Economy Soup:** Now what if I start having *weekly* soup parties and my friends start doing things for free too? As the spirit of giving and generosity grow, friends might offer free massage, gardening, computer help, handy work, or other favors. Other friends hold weekly salad nights, curry nights, or cook-out nights, and I get free dinners every day of the week! In this circle of giving, no one is *obligated* to give or receive anything, and no one is officially keeping track of who gives what and how it should be valued.

What are the legal implications here? Since the giving occurs among friends and comes from a place of generosity, shouldn’t it be tax free? And because there are no contractual expectations of compensation and because people aren’t bargaining for things at a market prices, these activities aren’t commercial, are they? I would say that’s probably right, but it’s hard to answer these questions with complete certainty. Slight variations in the above scenario could cause it to look more like example #3 (Barter Soup) or #6 (Soup Enterprises), which probably *are* taxed and regulated as businesses.

3. **Barter Soup:** Now what if my accountant offers to prepare my taxes in exchange for coming to five of my famous soup nights? Deal! But what does it mean legally? This example differs from the above Gift Economy example, because now we have a direct exchange that we’ve *bargained for*, and we have a binding verbal *contract* for barter. As discussed above, it’s not clear to me that *all* barter is taxed, but this arrangement is something the IRS would want us to report.

Another question to ask here is: am I now accidentally operating a soup business? Since I have a binding and bargained for agreement to receive valuable services as “payment” for my soup, I’ve essentially *sold* soup to my accountant. Regulation of business comes from all kinds of agencies – health departments, planning departments, state tax boards, and so on. In the eyes of some agencies, selling soup even one time is not acceptable. Since the law varies from place to place, and from agency to agency, the main thing to remember is: be careful and do your research before you accidentally find yourself in business.

4. **Time Bank Soup:** To continue expanding on the soup scenarios, my next project could be going to the homes of elderly and disabled to help with cooking. Because they and I are part of a local time bank similar to the Japanese Furai Kippu (“Caring Relationship Tickets”) system, for each

hour that I spend helping out, I get a “time dollar.” Later on, I could redeem each “time dollar” for an hour of someone else’s time.

In [three rulings](#), the IRS has given some vague indication that they aren’t interested in taxing exchange of services like this. They give at least two reasons: 1) The exchanges are informal, meaning that I get no contractual right to have my favor returned. 2) The exchanges are non-commercial, meaning that they aren’t bargained for at market rates; whether I spend an hour cooking soup or an hour providing legal advice, my hour is valued at the same rate, and all transactions are an-hour-for-an-hour. Those tax rulings are not supposed to be relied on as precedent, and there is disagreement about how they should be interpreted. Still, they provide some of our only clues about what the IRS views as being outside the realm of taxation.

5. **Soup for Hire:** Next, my landlord, who lives downstairs from me, learns of my superb soup and asks me to become a [personal chef](#) for her family, in exchange for allowing me to live rent free. I begin cooking two meals a day for her family, and at her pleading, learn to make things other than soup. The value of my free rent should be reported as income on my tax returns, and the value of my cooking services should be reported on her tax returns as rental income.

It’s quite possible that I should now be classified as her employee, since I work for her regularly and take some direction from her about what to cook. Knowing whether a [household worker](#) is an employee or an independent contractor is critical. If you misclassify a household worker, you can end up with heavy fines. (Then, when you run for public office, you can end up with [“nannygate.”](#))

6. **Soup Enterprises:** Moving on with my soup scenario, now my soup has become so popular that I make multiple pots of soup every day, invite people over to share it, or put it in mason jars for people to pick up on my door step. No one ever pays me U.S. dollars for my soup, but I have been able to use soup to “pay” for most of what I need. I now get “free” health care, bike repair, fresh produce, and many other necessities and perks in exchange for soup. Even with no money changing hands, chances are that I’ve suddenly found myself in the soup business, and should pay tax on the value of most of what I receive in return. Also, as crazy as it sounds, when my friends come over to hang out in my kitchen and help me chop veggies, the law says I should be paying them minimum wage.
7. **Soup Bucks:** Finally, I can take my soup operation one step further and start creating soup gift certificates. If I “buy” things with soup, it might be more convenient to give people a certificate that they can redeem for soup when they need it or which they could give to someone else. In fact, the U.S. Dollar came about in a similar way, except that it was backed by gold, not soup. If my “Soup Bucks” start circulating within my local community, they essentially become a local currency. Each certificate has value not only because it can be exchanged for soup, but because it can be exchanged with anyone who is willing to accept it. The success of Soup Bucks as a currency will be based on the community’s trust in my ability to keep on making soup.

Starting your own currency and printing paper money is a legal and legitimate thing to do in all but two states, and with some limitations, [which you can read about here](#). But if you plan to back the currency with a guarantee of particular goods or services, then it’s possible that the currency also meets the definition of a [gift certificate](#), which is a form of contract and has various regulations attached.

## I Can See Clearly Now the Money's Gone

Even with all the annoying legal grey areas and hurdles, transacting without regular money is one of the most important things we can do to transform our economies. But why should we even delve into this world beyond money? After all, hasn't our national currency been a useful and efficient tool for transacting with one another? Yes, in theory.

But, in practice, dollars aren't always there when we need them, and whole communities suffer from the scarcity of dollars. To begin to understand how our money and banking systems play a role in actually *creating* scarcity, I'd recommend watching the online movie "[The Money Fix](#)."

The scarcity of money could actually be our good fortune if it forces us to see that *value* remains even when money does not. In reality, we have a wealth of valuable people, skills, goods, time, and potential in our communities. This value is highly unrecognized and underutilized because we've all had a lifelong dependence on transacting almost exclusively with our national currency.

Transacting through barter, gifting, time banks, and other creative means will instantly open up potential for strong, localized, and sustainable economies. While you can't use "Soup Bucks" to shop at Target or Safeway, you may be able to use Soup Bucks to support local crafts people, micro-farmers, small manufacturers, and friends who can help you meet your needs. Rather than struggling to compete with multimillion dollar companies, a new generation of micro-entrepreneurs will thrive on new kinds of transactions.

The new economy comes hand-in-hand with more connected and supportive communities – neighborhoods where people know each other, circles of acquaintances who actively support each other, and more widespread use of [cooperatives](#) as a way to feed, house, and provide for ourselves and others. The new economy not only gives us a means to survive; it gives us a great way to live.

## Opening Up a Gift [Economy]

Giving and receiving gifts is the simplest way to get started in informal economy, because true gifts are largely unregulated and untaxed. Let your friends know you are exploring a gift-based economy, and tell people what you have to offer. Feeding people is a particularly good way to get it started, because sharing a meal builds connections among people. Don't ask people to pay you back, but do encourage them to pay it forward! Starting or joining a gift circle is another way to get started, and I recommend reading [Alpha Lo's writings on gift circles](#).

## Further Unwrapping the [Definition of] Gift

If we actively create gift economies, it's important to analyze the tax implications of each gift. To help us delve deeper into the definition of a gift (specifically regarding the Internal Revenue Code Section 102 definition), the U.S. Supreme Court has given us some guidance, best summed up in *Commissioner v. Duberstein* 363 U.S. 278, 285 (1960). Here are some quotes from the Supreme Court, along with my own summaries in bold:

1. **Gifts arise from generosity:** "A gift [...] proceeds from a detached and disinterested generosity, out of affection, respect, admiration, charity, or like impulses."
2. **Gifts don't come from a moral or legal obligation:** "If a payment proceeds primarily from the constraining force of any moral or legal duty, [...], it is not a gift."

3. **Gifts are not given with an anticipation of return:** “If a payment proceeds [...] from the incentive of an anticipated benefit of an economic nature, it is not a gift.”
4. **Gifts are not given as a payment for something:** “Payment made in return for services rendered is not a gift.”
5. **The intention of the giver is what matters:** “In determining whether a transfer of property is a gift, [...] the controlling factor is the intention with which the transfer [...] has been made.”

As legal standards go, this one is particularly fuzzy and touchy-feely. If the authenticity of a gift is ever questioned by the IRS, a judge or jury must attempt to gain insight into the thoughts and feelings of the giver, to guess at their motives and intention. They would have to rely on vague criteria, such as the existence of a friendship, the non-existence of a business relationship, and other quasi-objective factors to guess at what the giver was feeling. If our gift economies ever go to trial, it will at least be interesting!

Even with the clues the Court has given us, the concept of a “gift” is still somewhat unwieldy. Let’s apply it to another scenario: For years, I make soup for my elderly neighbor, simply as a kind gesture. Then, I go through a rough financial time after setting my kitchen on fire. My neighbor, who just received a large inheritance, gives me \$2000 to help out. These gestures do seem to arise from pure generosity and charity, so hopefully I wouldn’t have to include the \$2000 in my income. But what if, absent financial troubles on my part, she gave me the check and said, “the soup has been so helpful to me over the years, but I’ve never been able to return the favor. I feel I should compensate you somehow!” Hmmm. Now is she giving me money out of a feeling of obligation? Does that mean the \$2000 is income to me? Probably.

Since the circumstances and intentions surrounding every gift could vary, the safest thing to do is to independently analyze every gift you receive to determine whether it should be included in your reported income. Think about the criteria listed above, and about the intention of the person from whom you received the gift. If it appears that a gift you are receiving comes as payment for something you have done or will do in the future, you should probably report it as income.

## **Barter Starter Guide**

### **Entering into a Barter Agreement**

If you are bartering for services, for something of significant value, and/or for something that relates to your business, it’s a very good idea to get the arrangement in writing. The writing doesn’t have to be a formal contract; it could be sufficient just to have an email exchange where you discuss and agree to the details. People tell me stories of barter gone wrong, and I find that it typically arises from a lack of clear expectations about what people will do for each other. “I will tune up your car if you build my website” is not a sufficiently detailed agreement.

An agreement for barter should at least include:

- 1) The timeframe for getting things done;
- 2) A detailed description of what will be done or exchanged, the quality and scope of the work, and what constitutes a job well done;
- 3) Whether there’s an upper limit of the number of hours each person will put in on the project;
- 4) For tax purposes, what value will you assign for the services; and
- 5) What happens if one person fulfills their end of the barter agreement, but the other person does not? How will the person who did their work be compensated for their time? In regular money, and, if so, how much?

### **Paying Taxes on Barter**

As I discussed earlier in this article, it's not clear to me that the IRS wants to tax every exchange of goods or services, even though the rules do make it seem that way. The IRS doesn't seem to concern itself with casual, non-commercial exchanges of goods or property, such as trading small favors with neighbors, taking turns driving in a carpool, exchanging babysitting with another family, and so on. But when you barter for something that you could normally get money for, when you bargain for it at or near a market rate, when you are in the business of providing the good or service you are bartering with, or when you get something in a barter arrangement that would generally be counted as income had you received it in cash, then you should pay taxes on the value.

### **Determining Value**

Determining the value of the barter income will be a challenge. According to the IRS, "if services are paid for in property [or in exchange for other services], the fair market value of the property [or services] taken in payment must be included in income as compensation." Treas. Reg. § 1.61-2(d)(1).

Fair market value is a dollar amount that is based on what people in society at large are willing to pay for something. The irony and difficulty of this requirement is that many barter transactions take place outside of the marketplace, and the elements of generosity, cooperation, and community skew the price.

Another tricky piece of this is that we must overcome the law's presumption that a barter transaction always entails trading two things of equal value. The law states that "if the services are rendered at a stipulated price, such price will be presumed to be the fair market value of the compensation received *in the absence of evidence to the contrary*." Treas. Reg. § 1.61-2(d)(1).

Here's what that means: If a physical therapist typically charges \$100 per hour, but agrees to provide therapy to someone in exchange for home-grown vegetables, it is unlikely that the stipulated price of \$100 will be equaled by a modest bag of veggies. The physical therapist shouldn't have to report \$100 of income for each therapy session, but the law presumes that she should. What she can do is make a reasonable determination of the fair market value of the vegetables she receives, keep a written record of what she received and how she determined the value, then report that amount as income. That way, if she is ever audited, she has a record containing the required "evidence to the contrary."

### **Reporting Barter Income**

Usually, barter income should be reported on Schedule C, unless the value you have received is akin to a different category of income. For example, if you have received a good or service in lieu of receiving a rent payment, you report the value as rental income on Schedule E.

Don't forget that when you report barter income, you can also deduct related business expenses. Thus, if an accountant provides \$1000 worth of services to a web design business, and the web design business provides \$1000 worth of services to the accountant, they each report \$1000 of income, and deduct \$1000 of business expenses (since accounting fees and web design fees are presumably businesses expenses for each). The net effect is that no taxes are paid.

You can also take into account the basis of property that you barter with. For example, if you barter your personal car for an electric bike worth \$1000, it doesn't mean that you will have \$1000 of net income, since you probably paid more than \$1000 for the car to begin with.

How and where to report, deduct, and adjust all of this on your tax returns is getting beyond the scope of what I can explain, and is more of a question for a tax accountant. If you plan to make barter a significant part of your economic activity, I'd recommend finding an accountant who is willing to learn the ins-and-outs of barter and help you sort out the details.

### **And Do Not Send Soup the IRS!**

Another irony about the taxation of non-cash income is that the IRS expects you to pay the tax in cash. If the IRS considers 50 jars of soup to be income, why can't we just send them 8 jars to fulfill our tax obligations? Or 8 Soup Bucks? Unfortunately, we don't have that option at this time, and it requires us to always keep at least a small foot in the cash-based economy.

Nevertheless, the idea of paying taxes in something other than cash is not an outrageous idea. As local currency expert [Mira Luna](#) has suggested, there should be a program that allows us to fulfill our tax liabilities by performing community service. It would be sort of like a time bank for paying taxes. In my hypothetical soup case, since I receive almost no cash for my soup, I could put in a few hours a week volunteering at a nonprofit soup kitchen to satisfy my tax liability.

## **Barter Exchanges and Time Banks**

### **Barter Exchanges**

Barter can be a person-to-person transaction, or it brokered by a third party within a network of participants, through what the IRS calls a "barter exchange." The new [Green America Exchange](#) is an example of a barter exchange, where members can offer their services and goods to other members, and receive "payment" in Exchange Dollars. Green America has, in essence, created a new currency; but because they are facilitating and administering the transactions, Green America is considered a barter exchange. As such, they are obligated to report the members' barter income by filing form [1099-B](#).

### **Time Banks**

It's important to note that [time banks](#) are not considered barter exchanges. The IRS has declined to regulate time banks in the same way that they regulate barter exchanges, recognizing that time bank transactions are "informal exchange of similar services on a noncommercial basis and do not result in the creation of contractual rights and obligations among members" (Private Letter Ruling 9608009, November 9, 1995). Thus a time bank organization will generally not have to file a 1099-B for member transactions.

Time banks are unique in that one person's hour is valued the same as someone else's hour, so there is no market-based valuation of people's services. In addition, people can spend time dollars, accumulate a negative account balance, and they are never legally obligated to "repay" them. It means that people who are in need can use a time bank to get assistance, without having to first accumulate a positive balance. In this respect, time banks aren't really facilitating barter; they are facilitating a culture of giving that could be an incredibly important tool for relieving poverty. If your community does not yet have a time bank, I'd recommend starting one!

## **Final Thoughts and Important Note**

This article was an attempt to make sense of things that don't make a lot of sense, and provide information on topics about which there is very little information available. Barter, gift economies, time banks, and related practices are crucial components of more sustainable economies, and we should not



be deterred by the legal uncertainties. It will probably never be easy to answer questions like: Am I a business or not? Is this taxable or not? Am I an employee or not?

When legal definitions are unsettled, the best that we can do is 1) gain as much understanding as we can, by reading laws, regulations, tax rulings, and court cases, and 2) based on that information, make good faith and reasonable determinations about how to classify our activities. Sometimes, you may get the answer wrong, which means dealing with the consequences when the IRS, Department of Labor, or other agencies come calling. It's up to you to decide what risks are worth taking.

Please also keep in mind that the information in this article is not legal advice. Legal information is not the same as legal advice, which is tailored to an individual's specific circumstances and relies on the lawyer knowing all the relevant facts.

Also, I can't claim that this article has been comprehensive, since there are other laws, rules, and cases out there that could provide additional insight. My goal here was to summarize the important points, boil them down, and make them digestible.

As digestible as soup, perhaps? All of that said, happy bartering and gifting!

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