

SUBSTANTIATION RULES FOR CHARITABLE GIFTS

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Concerned perhaps that sometimes even the righteous need guidance, the Internal Revenue Service has in the past two decades provided taxpayers with a wearying progression of regulations governing the substantiation of charitable gifts. Gone are the days when a taxpayer simply reported on a tax return a contribution of cash or property to some worthy cause. Instead, before a taxpayer receives an income tax deduction for a charitable gift, he or she must negotiate a maze of substantiation rules based on the type of property contributed, the value of such contribution, and the type of form attached to the income tax return.

Contributions of less than \$250

When a donor contributes less than \$250 in cash to a charity, the donor need only retain a canceled check, a receipt from the charitable donee, or some other reliable written record. Reg. §1.170A-13(a)(1). The requirement of a receipt is somewhat informal as the regulations permit a simple letter or other written communication from the charity acknowledging receipt of the contribution and showing the date and amount of that contribution. In the absence of a canceled check or a receipt from the charity, the taxpayer's own documents may be sufficient as a reliable written record. A contemporaneous diary, for example, maintained by the taxpayer stating the amount and date of the donation and the name of each donee charitable organization will be considered reliable. Reg. §1.170A-13(a)(2)(B). Even small evidence of a donation such as an emblem, button or other token traditionally associated with a charitable organization and regularly given by the organization to persons making cash donations, will be accepted.

Contributions of non-cash property valued at less than \$250 have similarly informal rules. The taxpayer should obtain a receipt showing the name of the recipient charity, the date and location of the contribution, and a description of the property donated. Although the fair market value of the property donated is important for determining the amount of the deduction, such value need not be stated on the receipt. As with small cash contributions, the regulations provide that the taxpayer's reliable written and contemporaneous records will be accepted in lieu of a receipt or other written documentation from the recipient charity.

Separate contributions of less than \$250 each to a single donee in the same taxable year are not aggregated to determine whether the \$250 threshold has been met, thus significantly reducing the level of documentation required to be created, maintained and submitted to the Internal Revenue Service on the donor's tax return. Reg. §1.170A-13(f)(1). Accordingly, a donor who contributes \$200 per month can avoid the substantiation requirement applicable to contributions of \$250 or more, even though \$2,400 has been contributed to the same charity in a single taxable year.

Contributions of cash or property valued at \$250 or more

More thorough substantiation rules apply when a taxpayer contributes \$250 or more in cash or property to charity. Treasury Regulations state that no deduction is allowed for all or any part of a contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee charity. Reg. §1.170A-13(f)(1). A written acknowledgment from the recipient charity is contemporaneous only if it is obtained by the taxpayer on or before the earlier of the date the taxpayer files his original return for the taxable year in which the contribution was made, or the due date, including extensions, for filing the return. If the taxpayer files his or her return on time without a contemporaneous written acknowledgment to substantiate the contribution of \$250 or more, he or she cannot later obtain the acknowledgment and amend the return or defend it in audit. Thus, it is vital that donors get acknowledgments before the return is filed. An untimely acknowledgment, no matter how reliable, does not satisfy the Regulations.

The contemporaneous written acknowledgment must show:

- The amount of cash contributed
- A description (but not necessarily the value) of any property contributed other than cash
- Whether the donee provided any goods or services in consideration of the contributed property, and if such goods or services were provided, a description and good faith estimate of the value of those goods or services

Not everything provided by a charity to a taxpayer is counted in calculating the goods or services received. A taxpayer may disregard intangible religious benefits, unhelpfully described by Internal Revenue Code §170(f)(8) as anything provided by an organization established exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context. Such benefits should include a leaf on a Tree of Life, tickets to religious services, and name recognition on a building, room, etc. It has been ruled that an acknowledgment that identifies, but does not promote, a donor is an inconsequential benefit with no significant value. Rev. Rul. 68-432, 1968-2 CB 104 (privileges associated with or being known as a benefactor of an organization are not benefits with a significant value). Annual membership benefits in exchange for payment of \$75 or less per year are also excluded, and examples of such benefits are provided in Reg. §1.170A-13(f)(8).

In addition, goods or services having insubstantial value can be disregarded. Rev. Procs. 90-12 and 92-49 provide some guidelines in determining what benefits provided to donors are insubstantial, including a safe harbor for charities trying to determine the value of the goods and services they provide. The value used in the safe harbor calculations is indexed for inflation. An item given by a charity to a donor can be ignored if the cost of such item is below an inflation based index. In a telling comment on American social values, Reg. §1.107A-13(f)(14) is dedicated exclusively to the non-deductibility of contributions to a college or university for the right to purchase tickets to athletic events.

Minimal restrictions are placed on a charity's good faith estimate of the fair market value of goods or services provided in return for a contribution. Reg. §1.170A-13(f)(7) permits the donee

charity to estimate that value without benchmark documents, and by any method it chooses. The *quid pro quo* rules under IRC §6115 do provide, however, that a charity must use a "reasonable methodology" in making its good faith estimate of value. For example, if a charity hosts a buffet dinner for a donation of \$50.00 and the retail value of a comparable meal is \$10.00, only \$40.00 is deemed to be a charitable contribution.

Finally, contributions by a taxpayer through an employer's payroll deductions have their own specific substantiation requirements, but only if the contributions total at least \$250 per pay period, probably not a common circumstance.

Contributions of non-cash property with more than \$500, but not more than \$5,000

In addition to the substantiation requirements described above, if the taxpayer makes a charitable contribution of non-cash property in a taxable year in excess of \$500, he or she must also maintain written records that include the following information with respect to such property:

- If the property was acquired by the taxpayer, the manner and the approximate date of acquisition
- If the property was created or produced by the taxpayer, the approximate date the property was substantially completed
- For property other than publicly-traded securities, the adjusted basis of the property

In addition, if the taxpayer makes a contribution of more than \$500 in non-cash property during a taxable year, he or she must also prepare and file Internal Revenue Form 8283 with his or her tax return.

Contribution of property valued at more than \$5,000

The Regulations also impose greater responsibilities on taxpayers generous enough to make non-cash contributions of property valued at more than \$5,000. In addition to all the other requirements set forth above, the taxpayer must obtain a qualified appraisal for all of the property contributed and attach fully completed appraisal summaries to his or her tax return for the year in which the deduction is first claimed. A qualified appraisal must be prepared not earlier than 60 days prior to the date of contribution of the property nor later than the due date of the return with extensions, and must be prepared, signed and dated by a qualified appraiser. In addition, the appraisal must not involve a prohibited appraisal fee, and must include the specific information required by Reg. §1.170A-13(c)(3)(ii), as follows:

- A description in sufficient detail for a person who is not generally familiar with the type of property to ascertain that the property that was appraised is the property that was, or will be, contributed
- The physical condition of the property
- The date or expected date of the contribution
- The terms of any agreement or understanding entered into regarding the use, sale or other disposition of the property contributed

- The name, address and tax identification number of the appraiser
- The qualification of the appraiser, including background, experience, education, and membership in any professional appraisal association
- A statement that the appraisal was prepared for tax purposes
- The date on which the property was appraised
- The appraised fair market value of the property on the date or expected date of the contribution
- The method or valuation used to determine the fair market value of the property
- The specific basis for the valuation, such as comparable sales, statistical sampling or other method.

To reduce the burden of paperwork to the Internal Revenue Service, but not to the taxpayer, the qualified appraisal is not submitted with the return, but is required to be maintained by the taxpayer for as long as the taxpayer's return is subject to audit. Attached to the return itself is only an appraisal summary, consisting of the information listed on Section B of Internal Revenue Form 8382, and signed by the qualified appraiser.

As might be expected, contributions of cash or publicly-traded securities in excess of \$5,000 are not subject to the additional documentation requirements, unless the securities are governed by restrictions which materially affect the value of the securities or prevent them from being freely traded, or where the securities whose value is claimed as a charitable deduction is different from the value listed in a market quotation from an established securities market. Reg. §1.170A-13(c)(7)(xi)(C).

Finally, unlike the aggregation rules for cash contributions less than \$250, all contributions of non-cash property are aggregated in determining whether the taxpayer's contributions exceed \$5,000 in a given taxable year, even where all similar items are donated to different charities. If the taxpayer, for example, were to contribute \$4,000 of artwork to each of three different charities, all of the substantiation rules must be complied with as the total aggregate value of contributed property exceeds \$5,000.

Conclusion

The substantiation rules for the deductibility of charitable contributions of cash or property are not complex, but must be adhered to scrupulously or the deduction will be disallowed. See, for example, *Hewitt v. Comm.* (1998) 109 T.C. 258, in which a taxpayer was denied a charitable contribution for gifts of non-publically traded stock worth more than \$100,000.00 where the taxpayer failed to obtain and submit the written appraisal required by Reg. §1.70A-13(c). Because significant contributions require contemporaneous documentation, taxpayers should consult their accountant or lawyer before the contribution is made to be certain that all substantiation requirements are complied with.