CHARITABLE CONTRIBUTIONS & FUND-RAISING

(tickets, gifts, raffles, prizes, admissions, privileges) Rules, Disclosure and Reporting)

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What Qualifies as a Charitable Contribution?

Example 1. Having heard about the earthquake in Haiti, Mr. Smith arranged with his neighbors to send food and clothing directly to a church in Haiti that would distribute it amongst needy families. He wants to know if the cost of the food and clothing and its transportation to the Haitian church is deductible as a charitable contribution.

IRC §170(a)(1) permits a deduction for charitable contributions as defined in §170(c).

- §170(c) defines a "charitable contribution" as one made generally to a "corporation, trust or community chest, fund or foundation" [1] that is "organized and operated" exclusively for "religious, charitable, scientific, literary or educational purposes, or to foster national or international amateur sports competition… or for the prevention of cruelty to children or animals." [2]
- The organization to which the contribution is made must be "created or organized in the United States or… under the law of the United States, any State, the District of Columbia, or any possession of the United States"[3]
- Contributions to a political subdivision of the US or any State also qualify for charitable contributions if the gift is made "exclusively for public purposes."[4]
- Contributions to certain enumerated organizations such as domestic fraternal lodges or societies or cemetery organizations can also qualify as charitable contributions if those organizations meet certain criteria described in §170(c).[5]
- Section170(c) also contains restrictions that prohibit contributions from qualifying for the charitable deduction under §170(a);
- no part of the earnings of the organization can inure to the benefit of a private shareholder or individual, and the organization must not be disqualified under

[1] §170(c)(2)
[2] §170(c)(2)(B)
[3] §170(c)(2)(A)
[4] §170(c)(1)
[5] §170(c)(4) and (5)

§501(c)(3) by reason of attempting to influence legislation, or participate in political campaigns on behalf (or against) any candidate for public office.[6]

Answer to Example 1. The donation of food and clothing to the church in Haiti likely will not qualify as a charitable contribution. To qualify, the organization to which the contribution was made must be created or organized in the US or under the laws of any state, unless there is a tax treaty with the foreign country permitting such direct contributions.

However, a contribution of clothing to a domestic charity that that transfers funds or property to a charitable foreign organization qualifies, if the use of the contributions are subject to the domestic organization's control and contribution isn't earmarked in any way for use abroad.[7] Thus, if instead Mr. Smith organized to help needy families in Haiti through his local church in the US, likely the donation of food and clothing would qualify as a charitable contribution, provided the donations are controlled, reviewed and approved by the local charity (i.e. not earmarked for the Haitian church) . Such contributions received by the domestic charity are regarded as for the use of the domestic charity and not for the foreign organization that may actually receive the gift.

Other limitations on charitable contributions:

1. Percentage of income limitations for both individuals and corporations contained in IRC §170(b).
2. Contributions of appreciated tangible personal property may only be deductible to the extent of its cost.[8]
3. Partial interests in property are generally not deductible.[9]
4. The values of clothing and household items are generally not deductible unless the item is in good used condition or better."[10] Household items include "furniture, furnishing, electronics, appliances, linens" and similar items.[11]

Example 2. The City Museum, a charity qualifying under Section 1701(c), is conducting a fundraiser, including a live auction. Mr. and Mrs. Mariner, supporters of the City Museum, own a 50-foot yacht moored in Sausalito. They offer a one-week use of the yacht to be auctioned at the fundraiser. Mr. and Mrs. Bucks are the highest bidders and pay City Museum $2,000 for this item. Do the Mariners get to take a charitable deduction for the use of their yacht, and do the Bucks get to deduct as a charitable contribution the $2,000 paid to the City Museum?

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[6] §170(c)(2)(C) and (D)
[7] Rev Rul 63-252; Rev Rul 66-79 , Rev. Rul. 75-65.
[8] §170(e)(1)(b)(i)
[9] §170(f)(3)(A)
[10] §170(f)(16)(A)
[11] §170(f)(16)(D)(i)

Answer to Example 2. Mr. and Mrs. Mariner are not entitled to a charitable contribution of the value of the 1 week use of the yacht. A contribution of the right to use property the donor owns is not deductible as a charitable contribution. It is considered under §170(f)(3)(A) as a contribution of a partial interest in property which is not deductible.[12] Further, the Bucks cannot deduct the $2,000 paid to the City Museum for the use of the yacht. A payment to a charity is not a charitable contribution to the extent that valuable consideration is received in return.[13]

Example 3. Mr. Green is retired and rides his bike around town most days picking up cans and bottles, which he then sells to the recycling center; he then donates the sale proceeds to charity. In 2013, Mr. Green collected $1,000 from the recycling center and paid it to California State Parks Foundation, a qualifying charity. Can Mr. Green deduct his contribution?

Answer to Example 3. Mr. Green can in fact deduct his cash contribution to the charity. However, he first has to recognize $1,000 in income when he sells the cans and bottles to the recycler. Mr. Green has no tax basis in the can and bottles, and therefore when he gets cash for them a sale has occurred for tax purposes for which gain must be recognized. IRC §1001. What if instead Mr. Green contributed the cans and bottles to a charity and the charity sold them to raise funds. If tangible personal property contributed to charity is unrelated to the charity's exempt purpose, like bottles and cans, the donor is only able to deduct his tax basis.[14] Since Mr. Green has no basis (cost) in the bottles and cans, he cannot deduct any part of the contribution as a charitable deduction.

Example 4. Mr. Planter has been approached by Foundation for the Family Farm and wants to make a substantial cash gift; but he isn't certain if the contribution will qualify as a charitable contribution. How does he determine if his gift will qualify as a charitable contribution?

Answer to Example 4. Mr. Planter should ask the Foundation for a copy of its exemption letter from the IRS. Also, he should check the IRS Publication 78 which lists charities for purposes of being eligible to receive tax deductible contributions. It can be found only in electronic format. Go to http://www.irs.gov/Charities-&-Non-Profits/Charitable-Organizations/Exempt-Organizations-Select-Check:-Description-of-Pub.-78-Database. If the contribution is substantial, he should also search for other IRS publications, like rulings and announcements, to determine if the charity has lost its exemption.

Publication 78 is generally updated quarterly. In Publication 78, the IRS lists organizations that have received a ruling or determination letter from the IRS stating generally that contributions are deductible under §170(c). However, if after the letter was issued there is a material change in the character, purposes, activities, or method

[12] Regs §1.170A-7(a)(1)
[13] Revenue Ruling 67-246
[14] §170(e)(1)(b)(I)

of operation of the organization from those on which the ruling or determination letter was based and the change is such that the organization ceases, as a matter of law, to qualify under § 170(c), the ruling or determination letter immediately ceases to be applicable. However, the IRS may not be aware of the change that disqualifies the organization's qualification as a charity under Section 170(c). Notwithstanding, the IRS has stated that until there is notification in Publication 78 or by other IRS publications that the ruling or determination letter of the charity is revoked, a contribution to the listed charity will be deductible, unless the contributor was responsible for, or aware of, the act or failure to act that results in the organization's loss of public charity status.[15]

Example 5. Brenda Heartfelt, who lives in Fresno, decided on her own to drive to Moore, Oklahoma in late May, 2013, to volunteer to help clean up and rebuild the tornado damage there that occurred on May 20, 2013. She took unpaid vacation leave from work for a week to assist with cleanup. In association with her volunteer work, she incurred the following unreimbursed expenses:

- $500 for gas and oil.
- $700 for meals and lodging in Oklahoma.
- $80 for parking fees.
- $200 for special garments she was required to wear for protection against hazardous materials while working in the flooded areas.
- $500 to purchase new tires for her car before leaving Fresno for Oklahoma.
- $800 to repair her car's air conditioning that went out while in Oklahoma.

Based on these facts, how much of a charitable deduction could Brenda claim on her personal income tax return for these unreimbursed costs?

Answer to Example 5. Probably none of the costs incurred by Brenda are deductible charitable contributions. A taxpayer's contributions or gifts must be made to an IRC §170(c) charitable *organization* in order to be deductible charitable contributions.

Example 6. Same facts as Example 5 except that Brenda was volunteer with a relief organization that qualified as a charity under IRC §170(c) (e.g. the Red Cross). In addition to the expenses she incurred in Example 5, she also wants to claim a charitable deduction in 2013, for the following:

- Brenda estimates that her time spent with the relief work was worth about $2,000 because she missed a week of work.
- Brenda paid $300 out of her own pocket a week's rent, food, and clothing, directly to a family who was dislocated by the tornado.

[15] Rev Proc. 2011-33

Answer to Example 6.

Gas, oil, meals, lodging, parking and garments. The $500 for gas and oil, $700 for meals and lodging in Oklahoma, $80 for parking fees and $200 for special garments she was required to wear for protection against hazardous materials while working in the disaster areas are all deductible as unreimbursed expenses. Generally, in order to be deductible as a charitable contribution, unreimbursed expenditures must:

- be incident to performing the service for a qualifying organization,
- The services must primarily benefit the charity and not the taxpayer, and
- The payment must not be earmarked for a particular individual.

Generally, unreimbursed expenditures made incident to the rendition of services to a qualified charitable organization may be a deductible contribution. Certain out-of-pocket travel and transportation expenses necessarily incurred in rendering donated services are deductible. Reg. 1.170A-1(g) provides.

> "unreimbursed expenditures made incident to the rendition of services to an organization, contributions to which are deductible, may constitute a deductible contribution. For example, the cost of a uniform without general utility which is required to be worn in performing donated services is deductible. Similarly, out-of-pocket transportation expenses necessarily incurred in performing donated services are deductible. Reasonable expenditures for meals and lodging necessarily incurred while away from home in the course of performing donated services also are deductible."

An individual may claim a charitable deduction for expenditures related to performing services for charities even though the individual was entitled to reimbursement but did not claim the reimbursement. [16]

The $500 to purchase new tires for her car before leaving Fresno, and $800 car a/c repair while in Oklahoma.

The issue is whether the unreimbursed expenses were incurred in connection with providing volunteer services whose primary purpose was to benefit the charity, or were personal to the contributor/taxpayer. The charity must be the primary beneficiary of the volunteer's payment of expenses, not the individual.

When a volunteer benefits personally, there is a dual purpose, and it is often not clear whether the taxpayer or the charity is the primary beneficiary. But if the individual contributor receive a substantial direct benefit, and the charity's interests were more incidental, then the expense incurred is not deductible. That is, where the volunteer

[16] *Wolfe v. McCaughn*, 5 F Supp 407 (DC Pa., 1933).

enjoys a significant personal benefit, the expense is not deductible even though the gratuitous services were provided to the charity.[17]

Brenda's deducting the cost of the A/C repair to her car is problematic because there is a substantial long term personal benefit. If the repair had been paid before she left for Oklahoma, clearly it would have been a personal and non-deductible expense. However, if the weather in Oklahoma when her A/C broke was hot such that not having A/C would have jeopardized Brenda's ability to perform her volunteer work, she would have a much better chance at deductibility. The expense of new tires is also questionable, because it is likely more of a personal benefit to Brenda than to the charity. But if a tire blew out or a water pump broke while on her trip to Oklahoma, or if these events occurred while she was in Moore, and a functioning car was a necessity for her volunteer work, she might have a better chance at the deduction. Brenda has the burden of proving that they qualify as charitable deductions.[18]

Loss of $1,000 in wages because Brenda missed work.

The value of lost wages are not deductible. That is, no charitable deduction is allowed for the contribution of services, no matter how valuable.[19]

$300 for a week's rent, food, and clothing for a family who was dislocated by the tornado.

Generally no charitable deduction may be taken for amounts donated directly to individuals, which are considered private gifts.[20] But if the family was chosen to receive the aid by the relief organization for which Brenda was serving, and she paid those costs without being reimbursed by the sponsoring charity, they would be deductible charitable contributions.

II. FUNDRAISING: TICKETS, RAFFLES, PRIZES, ETC, RULES, DISCLOSURE & REPORTING

Example 7: The Central Valley Agricultural Museum is a tax exempt organization that has received an exemption letter from the IRS and qualifies under §170(c). It is publicly supported and not a private foundation. The Museum is planning its annual "Gala" fundraiser October 19, 2013 at its facility in Fresno. All amounts raised by the Museum over the cost of the gala will be used by the Museum for its tax exempt purposes.

[17] *Sheffels, Gilbert v. U.S.*, (1967, DC WA), 67-1 USTC ¶9247, affd (1969, CA9) 69-1 USTC ¶9159; *MacMichael, Thomas*, (1982) TC Memo 1982-703; Rev Rul 64-216, 1964-2 CB; *Babilonia, Constancio*, (1980) TC Memo 1980-207, affd (1982, CA9) 82-2 USTC ¶9478.
[18] *Saltzman*, 54 TC 722 (1970)
[19] Reg. 1.170A-1(g)
[20] *Wilkes, Jeffrey N.*, (2010) TC Summary Opinion 2010-53 .

Question #1. Five "Sponsors" of the event each paid $1,000; they received no tickets or other benefit, other than having their name recognized on the Gala Brochure (the printed handout for the Gala located at each table recognizing by name each sponsor as well as other contributors, silent auction contributors, etc.) Can the Sponsors each deduct the $1K as a charitable contribution?

Question #2. The Gala tickets will be sold for a sit-down dinner at $100 per ticket, and $900 for a table of 10. A good faith estimate of the value of the dinner is $60 per person. Can the attendees deduct any part of the cost of the tickets?

Question #3. 500 raffle tickets will be sold for $10 each and a drawing will be held at the Gala; the winner will receive a 70-inch flat screen TV and sound system worth $2,000. The solicitation says "Make a tax deductible contribution and win a valuable prize." Richie Respected writes a check to the Museum for $200 for 20 raffle tickets. Can he deduct any part of the $200?

Question #4. Museum will conduct a silent and live auction at the Gala; gifts for the silent and live auction have been contributed by donors at no cost to the Museum. Mr. and Mrs. Affluent purchased a 3 night package stay at the Lodge at Pebble Beach during final round of the 2014 Pro-Am Golf Tournament in February, 2014, along with tickets to the Tournament, and contributed the entire package to the Museum for the silent auction. The Affluents' paid $2,500 for this package. Can the Affluents' deduct this gift as a charitable contribution?

Question #5. The brochure printed for the live auction lists the Pebble Beach package as worth $3,000. Mr. and Mrs. Driver place the winning bid and write a check to the Museum for $4,500. How much if any can they deduct?

Question #6. The Museum gift shop is was open during the Gala and Mr. Dough buys a print at the gift shop for $5,000. Can he deduct any part of that purchase?

Question #7. Mr. and Mrs. Enthusiast buy two $100 tickets to the Gala but don't attend. Can they deduct the entire $200 as a charitable contribution?

Question #8. What obligations are there for the Museum to notify the above contributors?

Authority:

"Quid-Pro-Quo" Gifts.

Generally. IRC §170(a) provides that a charitable contribution deduction is available for gifts made to organizations defined in §170(c). But, where money is paid to a charitable organization in exchange for an anticipated benefit to the donor, beyond the mere satisfaction of a generous act, then the amount deductible by the donor as a charitable contribution in such "quid-pro-quo" transfer is limited. If the donor receives something of value in exchange for his gift to the charity that is commensurate with value with the money or property contributed, then no charitable deduction is allowed. Only if the taxpayer can establish that the payment made exceeds the monetary value of the benefits received can a charitable deduction be taken.[21]

Rev Rul 67-246. The IRS addressed the subject of quid-pro-quo gifts to charities in Revenue Ruling 67-246, and stated in its preamble and purpose statement:

> "In particular, an increasing number of instances are being reported in which the public has been erroneously advised in advertisements or solicitations by sponsors that the entire amounts paid for tickets or other privileges in connection with fund-raising affairs for charity are deductible. Audits of returns are revealing other instances of erroneous advice and misunderstanding as to what, if any, portion of such payments is deductible in various circumstances. There is evidence also of instances in which taxpayers are being misled by questionable solicitation practices which make it appear from the wording of the solicitation that taxpayer's payment is a "contribution," whereas the payment solicited is simply the purchase price of an item offered for sale by the organization.

Things haven't changed much in the 46 years since the publication of this ruling.

> Rev Rul 67-246 states further:
>
> > "Where it is disclosed that the public or the patrons of a fund-raising affair for charity have been erroneously informed concerning the extent of the deductibility of their payments in connection with the affair, it necessarily follows that all charitable contribution deductions claimed with respect to payments made in connection with the particular event or affair will be subject to special scrutiny and may be questioned in audit of returns."

Payments to Charity of More than $250-Acknowledgement by Charity Required In Order to Take Deduction. Under IRC §170(f)(8) and regulations 1.170A-13(f), a taxpayer

[21] Rev Rul 76-185

cannot take a charitable tax deduction for contributing cash (or property) to a charity of more than $250 unless he receives a "contemporaneous written acknowledgment from the donee organization."

What is a "Written Acknowledgment?" A written acknowledgment[22] is a notice to the donor that contains the following information:

- Amount Paid By Donor In Cash. The amount of any cash the donor paid;
- Description of Property Other Than Cash Contributed to the charity, but not necessarily the value of the property
- Statement of Whether or not Goods and Services Were Provided By Donee.; and
- Description and Estimate of Value of Goods & Services. If the donee organization provides any goods or services other than intangible religious benefits[23], a description and good faith estimate of the value of those goods or services.

When Must the Contemporaneous Written Acknowledgment Be Given? To meet the "contemporaneous" requirement, the IRC and Regulations provide that the written acknowledgment by the charity/donee must be "obtained by the taxpayer" by the earlier of: (i) the date the taxpayer files his original return for the year the contribution was made, or (ii) the due date (including extensions) of filing for filing of the taxpayer's original return.[24] Thus if the taxpayer files his return early before the due date in the following year, he must receive the written acknowledgment from the charity before he files in order to be able to deduct the contribution. Therefore, if the contributor of more than $250 wants to take a charitable deduction for his gift, then he should not file his tax return until he has first received the written acknowledgment from the donee/charity.

What Are Goods and Services?. The Regulations[25] state that "goods and services" include "cash, property, services, benefits and privileges."

What is "Consideration for"? The Regulations[26] state that a contribution is made "in consideration for a taxpayer's payment" if the donor "receives or expects to receive" something of value in goods and services in exchange for the payment, whether or not in the year the contribution was made, or in the future.

What is a "Good Faith Estimate?" The Regulations[27] state that a good faith estimate means the charities' estimate of the fair market value of any goods and services, "without regard to the manner in which the organization in fact made that estimate." The donee/charity can make an estimate of value of goods and services in any way it deems appropriate, provided the estimate is made in good faith.

[22] Regs.1.170A-13(f)(2)
[23] See Regs.1.170A-13(f)(2)(iv) statements required for intangible religious benefits.
[24] IRC§170(f)(8)(C); Regs.1.170A-13(f)(3)
[25] Regs.1.170A-13(f)(5)
[26] Regs.1.170A-13(f)(6)
[27] Regs.1.170A-13(f)(7)

Insubstantial Goods and Services. . The Regulations[28] state that certain goods and services "having insubstantial value" under the guidelines published by the IRS will not be taken into account if the value of such goods and services do not exceed a certain amount. The Regulations[29] refer to Rev. Procs. 90-12 and 92-49 "or any successor" authority for what constitutes an item of insubstantial benefit. Every few years the IRS publishes the effect of inflation on certain code or regulation provision. The latest Revenue Procedure dealing with this issue[30] states that for 2013 the fair market value of all benefits in a fundraising event cannot exceed the lesser of 2% of the contribution or $102. If the goods and services do not exceed this amount, then they are of insubstantial benefit and their value need not be stated on the written acknowledgment.

The Regulations give examples of benefits of insubstantial value:

a. Membership benefits such as free or discounted admission to the organization's facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services.[31]

b. If the contribution is $51 or more, and only "token items" are given to the contributor such as bookmarks, calendars, keys chains, mugs posters, tee shirts and the like with the charity name or logo.

c. "Low cost articles" with a value of $10.20 or less.[32]

§170(f)(8)(D) provides an exception to the requirement that the charity notify the donor for gifts of cash or property of $250 or more, if the charity files a return, required under the Regulations, which includes the amount, description and value if goods or services were provided.

Answer to Example 7, Question #1. Sponsors. The $1,000 donated by each Sponsor is fully deductible, unless they received goods or services in consideration in part for their sponsorship. If the Sponsors received goods or services, their deduction would be reduced by the value of goods or services received. In this Question, each Sponsor paid $1,000. Since that is over $250, a contemporaneous written acknowledgment must be obtained from the Museum by each Sponsor in order to obtain the tax deduction. Each sponsor received a benefit of name recognition in the Gala Brochure. If the Museum can reasonably value that benefit at less than $102, then it is an item of insubstantial value and need not be listed on the written acknowledgement. Thus, the Museum can notify the Sponsor that the full $1,000 payment is deductible. But since the contribution to the Museum by each Sponsor

[28] Regs.1.170A-13(f)(8)

[29] Regs.1.170A-13(f)(8)(i)(A)
[30] Rev. Pro 2012-41
[31] Regs 1.170A-13(f)(8)(i)(B)
[32] Rev. Proc. 2012-41

exceeded $250, the Museum should, in accordance with IRC §170(f)(8) and regulations 1.170A-13(f), give a written acknowledgment to each sponsor along the following lines:[33]

> "Thank you for your support of the Museum and for your generous sponsorship contribution of $1,000. The only goods and services you received in consideration for your contribution was your name being listed as a sponsor in the Gala Brochure. Since the value of such benefit under Internal Revenue Service guidelines was insubstantial, the full amount of your payment is a deductible contribution."

Alternatively, the notice could also say:

> "Thank you for your support of the Museum and for your generous sponsorship contribution of $1,000. No goods or services were provided."

Without this notice from the Museum, the Sponsors' charitable deduction for the $1,000 gift in 2013 would be lost, unless under §170(f)(8)(D) the Museum itself files certain disclosures with its 2013 return, as discussed below.

Answer to Example 7, Question #2. Admission / Dinner Tickets. Persons who buy tickets to the Gala dinner cannot deduct the entire amount ticket price. Only that portion of the ticket price which exceeds a reasonable estimate of the fair market value of the admission or other privileges may be designated as a charitable contribution. But the burden is generally on the taxpayer to prove the amount deductible as a charitable contribution.[34] Without a timely written good faith valuation of the benefit provided, the donor will not be able to deduct any portion of the ticket price. In determining the fair market value, one considers what the charge would be for a reasonably comparable event. If the Museum in the solicitation materials or Gala brochure notifies the ticket purchasers that the value of the dinner is $60 and that only the excess cost is a charitable contribution, the contributors can deduct $40 per ticket.[35]

With proper written acknowledgment from the Museum, persons who bought a single ticket for $100 can deduct $40 as a charitable contribution. Persons who bought a table for 10 for $900 can deduct $300 ($900 minus the value of 10 dinners a $60 per ticket or $600).

Answer to Example 7, Question #3 Raffle Tickets.

Raffle tickets sold to entitle the contributor to a valuable prize are not deductible, regardless of what the solicitation said. Rev Rul 67-246, Example 5 states:

> "Amounts paid for chances to participate in raffles, lotteries, or similar drawings or to participate in puzzle or other contests for

[33] Rev Pro 90-12
[34] Notice 2004-7, 2004-1 CB 310; *Saltzman*, 54 TC 722 (1970); **Rev. Rul. 67-**246; *Jeffery N. Wilkes*, TC Summary Opinion 2010-53
[35] Rev Rul. 67-246, Example 2.

valuable prizes are not gifts in such circumstances, and therefore, do not qualify as deductible charitable contributions."

In a 6th Circuit appeal from the Tax Court, [36] the taxpayer had purchased raffle tickets from a charity in a fundraising event, and argued that the chances of winning were so infinitesimal that the benefit (chance of winning) was nearly worthless. As a result, the taxpayer contended that he should be able to deduct the cost of the raffle tickets. The 6th Circuit rejected this argument on procedural grounds that there was no evidence in the Tax Court proceeding that would sustain a value of the raffle tickets, and the taxpayer has the burden of proving value of the tickets, which he did not meet. The 6th court did state that the taxpayer got full consideration for what he paid for, i.e. a chance to win a valuable prize. The Court held that the taxpayer could not deduct any portion of the cost of the raffle tickets.[37]

Withholding. Note also that lottery winnings are subject to withholding if the amount paid either in cash or property exceeds $5,000 in value.[38]

Answer to Example 7, Question #4. Contributions of Property for Silent and Live Auction

Authority:

For Contributions of Property Valued Over $250, in order to obtain the contribution deduction, the donor must receive a contemporaneous written acknowledgment required in IRC §170(f)(8) and regulations 1.170A-13(f), as discussed above in Example 7, Question #1

Gifts of Property Generally. For all contributions of property other than money, Regulations 1.170A-13(b)(1) applies, and requires that the contributor maintain certain records, as follows:

1. A receipt from the donee showing the following information:

   a. the name of the donee;

   b. The date and location of the contribution; and

   c. A description of the property in detail reasonably sufficient under the circumstances. The fair market value of the property can be included in the receipt, but the regulations do not require it.

   A letter or other written communication from the charity with the above information constitutes a proper receipt.

[36] *Goldman, Douglas v. Com'r*, 46 T.C. 136 (1966), affirmed 388 F.2d 476, 479-480 (6th Cir. 1967);
[37] Also see: *Patterson v. Com'r*, T.C. Memo 1987-252; *See also* Rev. Rul. 83-130.
[38] Rev Rul 85-46; IRC Section 3402(q)(3); Regs 31.3402(q)-1(b)

2. Other Records of Donor. Regs 1.170A-13(b)(2)(ii) states that the donor maintain the following written records (in addition to the donee's receipt) which "shall be stated on the taxpayers income tax return if required by the form or instructions:"

    a. Name and address of the donee charity.

    b. Date and location of the contribution.

    c. Description of the contributed property in 'reasonable" detail.

    d. The fair market value of the property at the time the contribution was made and the method utilized in determining value.

    e. The basis of the property contributed.

Proposed regulations[39] would modify the above to provide that no deduction would be allowed for noncash charitable contributions of less than $250 by individuals unless the donor maintains a receipt from the donee containing the above information, with certain changes. However, these proposed regulations are not yet final.

Donee/Charity's Written Notice. Therefore, to be prudent in order to assist the donor in obtaining the charitable deduction, in all cases of non-cash gifts by donors, the donee/charity should notify the donor in writing disclosing: a) the name of the charity, b) the date of the contribution, c) the location of the contribution, and d) and a description of the property contributed.

Donor's Obligation. In addition, the donor should retain the additional information required by Regs 1.170A-13(b)(2).

Gifts of Property Valued at More than $500.

Substantiation by Donor. IRC Section 170(f)(11)(A) denies that deduction of contributions of property worth more than $500 unless the following requirements are met:

1. The donor includes on his return for the year of contribution a description of the contributed property and such other information as is required by the Secretary.

2. If the value of the property claimed as a charitable deduction exceeds $5,000 in value, then a qualified appraisal is required.

Regs1.170A-13(b)(3) provide that a contributor who claims a charitable deduction on his return for property contributed to charity of more than $500, shall keep the following additional information:

[39] Prop Regs § 1.170A-15(h).

1. A written record with a description of the manner or acquisition of the property (e.g. purchase, gift, bequest, inheritance, or manufacture or assembly), and the date of acquisition or completion; and

2. The cost or other basis of the property.

Regs1.170A-13(b)(3) provides that donor shall include the required information on his return if required by the IRS form or instructions. The instructions to IRS Form 8283, Noncash Charitable Contributions, states that it must be filed by individuals, closely held or personal service corporations, S corporations and partnerships that claim deductions for noncash gifts of more than $500.

Answer to Example 7, Question 4. Mr. and Mrs. Affluent purchased a vacation stay at the Lodge at Pebble Beach and tickets to the Pro-Am tournament which they contributed to the live auction. If they wants to deduct more than $500 for this gift (it cost $2,500), they must file form 8283 with their 2013 return. But in order for the Affulents' to obtain their deduction, the Museum must also assist them by:

1. Sending a "contemporaneous" writing to them with the following information:

   a. The name of the charity;

   b. the date and location of the contribution;

   c. the description of the property contributed;

   d. whether the Museum provided any goods and services for the contribution;

   e. if goods and services where provided for a contribution [say a free Gala dinner ticket], then the Museum must provide a "good faith estimate" of the value of such goods and services provided; or

   f. §170(f)(8)(D) permits the Museum to comply with (1) above by filing a return, required under the Regulations, which includes the amount, description and value if goods or services were provided. I am unaware of any published regulations with regard to this section. However, this alternative substantiation compliance could be utilized should the Museum fail to timely notify the Affluents via a contemporaneous written acknowledgment described above.

Form of Notification of Contributor to Auction. On or before December 31, 2013, The Museum should send a written notification to Mr. and Mrs. Affluent with following notification:

> "Thank you for your support of the Museum. and for your generous contribution on October 19, 2013, at the Museum Gala of a 3-day stay at Lodge at Pebble Beach and 3-day tickets to the Pro-Am Golf tournament for February 6th -8th. No

> good or services were provided to you in consideration in whole or in part for your contribution."

Note that the value of the gift, or what it sold for, need not be listed in the notice. If the contribution had been cash of more than $250, instead of property, then the amount of cash contribution should be listed in the notice.

Answer to Example 7, Question #5. Purchases of Auction Items In this Question, the Drivers purchased the Pebble Beach package estimated in the Gala brochure to be worth $3,000 for $4,500.

Not every transfer to a charity is deductible as a charitable contribution. If the donor receives a financial or economic benefit commensurate with the amount paid, no deduction is allowed.[40] But if the donor receives a benefit worth less than what he paid, there is both a purchase and charitable gift, and the excess of the amount paid over the value of the benefit is a charitable deduction.[41] That is, purchases at a charity auction are deductible only to the extent that, the taxpayer pays an amount in excess of the fair market value of the property.[42] The burden is on the taxpayer to show that payment made was intended to exceed the value of the benefit received.[43] The Regulations state that the taxpayer may rely on the valuation placed on the benefit by the charity, unless the taxpayer has reason to know that such valuation is "unreasonable."[44] The Affluents paid $2,500 for the Pebble Beach package, but the Museum valued it at $3,000. The question is whether the valuation by the Museum was reasonable. If the Museum reasonably believed that the value of the package at $3,000 was reasonable, and Mr. and Mrs. Driver had no reason to believe it was unreasonable, then then the Drivers' may rely on that valuation. The Drivers' charitable deduction is therefore $1,500 ($4,500 minus $3,000). It does not matter that the Museum paid nothing for the auction items or that it gets 100% of the proceeds of the sale.[45]

The Museum should send the Drivers the following notice:

> "Thank you for your contribution to the Museum of $4,500 at the Gala on October 19, 2013. The value of goods and services provided to you in consideration for your contribution were $3,000. Therefore, under Internal Revenue Code guidelines, the amount of the contribution that is deductible for federal income tax purposes is limited to $1,500."

As discussed below with regard to Section 6115, this notification may be required to be sent shortly after the Gala, rather than before the donor files his return for the taxable year of donation.

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[40] Rev. Rul 76-185.
[41] *Sklar, Michael v. Com*., (2002, CA9) 279 F3d 697; *Oppewal, Jacob v. Com*., (1972, CA1), 468 F2d 1000; *DeJong, Harold*, (1961) 36 TC 896, affd (1962, CA9) 309 F2d 373.
[42] Reg. §1.170A-1(h)(5), Ex. 2.
[43] Notice 2004-7, 2004-1 CB 310; Regs. 1.170A-1(h)(1)
[44] Regs. 1.170A-1(h)(4)(ii)
[45] Rev Rul 67-246, Example 9.

Answer to Example 7, Question #6. Purchase of Print at Museum Shop by Mr. Dough. The print was listed at a price of $5,000, and this is what Mr. Dough .paid for it. There is no evidence of any difference between the price of the print and its value. Mr. Dough cannot deduct any part of the $5,000 as a charitable contribution.[46]

Answer to Example 7, Question #7. Non-use of Gala Ticket. The IRS's position is that only the $40 value of the ticket to the Gala in excess of the value of the benefit (meal, entertainment) is deducible. The privilege of attending the Gala means that Mr. and Mrs. Enthusiast received or were entitled to receive $60 worth of value for each ticket, and to that extent cannot deduct the that portion of the Gala ticket price. However, if Mr. & Mrs. Enthusiast merely sent in a $200 check saying at the time that they did not want to attend the Gala, then they could deduct the entire $200.[47]

Answer to Example 7, Question #8. Charity's Legal Obligation to Notify Donors.

Notification Requirements by the Museum for Quid-Pro-Quo Contributions.

Background: As stated above, a 'quid pro quo' contribution is a payment made by a donor partly as a contribution and partly in consideration for goods or services provided to the donor.[48] Internal Revenue Code §6115 requires that if a charitable organization receives a quid pro quo contribution in excess of $75, it must notify the donor with a written statement containing the following information[49]:

> 1. A statement informing the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of the amount of any money and the value of any property other than money contributed by the donor over the value of the goods or services provided by the donee organization; and
>
> 2. A good faith estimate of the value of the goods or services provided by the donee organization.

Such a written statement must be provided to the donee/contributor either: (1) in connection with the solicitation, or (2) upon receipt of the contribution.[50]

Quid-Pro-Quo Contributions in Excess of $250. The notification requirements contained in Section 6115 differ in both timing and content from IRC §170(f)(8). Under §170(f)(8), for contributions in excess of $250, if the taxpayer wants the tax deduction, he must have a contemporaneous written acknowledgment from the charity before he files his return. Under §6115, in the case of quid-pro-quo contribution in excess of $75, the notice must be sent by the charity earlier, i. e. in connection with the solicitation or upon receipt of the contribution.

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[46] Rev Rul. 67-246, Example 4.
[47] Rev Rul. 67-246, Example 7.
[48] IRC §6115(b)
[49] IRC §6115(a)
[50] IRC §6115(a)

To avoid two separate notices of quid-pro-quo contributions of amounts in excess of $250, the charity should sent a combined contemporaneous written acknowledgment under IRC §170(f)(8), and the Section 6115 notice at the same time shortly after the quid-pro-quo contribution is made. Example 7, Question 5, above gives an example of such notice.

Goods and Services of Insubstantial Value. Under the §6115 Regulations, certain goods and services of insubstantial value may be disregarded in meeting the requirements of Section 6115. This was discussed above with regard to Regulations 1.170A-13(f)(8)(i).[51]

Penalty for Failure to Properly Notify Contributor.

A penalty can be assessed against a charity for failure to properly notify contributors pursuant to §6115. Section 6714 of the Code provides:

> "If an organization fails to meet the disclosure requirements of Section 6115 with respect to a quid pro quo contribution, such organization shall pay a penalty of $10 for each contribution in respect of which the organization fails to make the required disclosure, except that the total penalty imposed by this subsection with respect to a particular fundraising event or mailing shall not exceed $5,000."

There is a "reasonable cause" defense to this penalty in §6714(b), but that defense may be difficult to establish, since all charities are deemed to know the law regarding such notifications.

Thus, if a charity fails to properly notify a contributor of a $75 or more quid-pro-quo contribution after the solicitation or receipt, it is subject to the penalty. However, I have found no authority that prohibited a donor from taking the charitable deduction if charity was late in its notification. But if the notification is not in conformance with the above time requirements of §6115, then to be prudent, the written notification should be sent by the charity to the contributor as soon as possible.

Answer to Example 7, Question #8, Conclusion. The purchase of a $100 ticket to the Gala is a quid-pro-quo contribution in excess of $75. Thus, under §6115, the Museum has an obligation to notify persons who buy tickets to the Gala that the $100 ticket entitles them to only a $40 charitable contribution. In addition, the notification must be made either with the solicitation notice or upon receipt of payment for the dinner tickets. Such notification upon receipt of the contribution could take the following form:

> "Thank you for your purchase of a ticket to our Gala event for $100 and for your support of [Museum]. Under regulations of the Internal Revenue Service, we are required to inform you that contributions to [Museum] are deductible for tax purposes only to the extent the ticket cost exceeds the value of goods and services provided. We have determined that the value of

[51] Regs. 1.6115-1(b).

the goods and services provided to you consisting of the Gala dinner and entertainment is $60 per ticket, and therefore the amount qualifying as a charitable deduction for each $100 dinner ticket is $40."

Differences in Contribution Notification Requirements. As discussed above, the notices to be sent by the charity to contributors differ depending on whether the contribution:

1. Is cash of less than $250;
2. Is cash or property of greater than $250;
3. Is cash or property of greater than $500;
4. Is a contribution of property of any amount; and
5. Is a quid-pro-quo contribution of more than $75.

III. A Bit More About Disallowance of Cash Contributions Due to Failure of Adequate Substantiation.

Cash Contributions**.**

Example 8. When shopping at the grocery, Mrs. X always puts $5 in the box at checkout for the Red Cross, a bona fide Section 170(c) charity. In 2013, Mrs. X shopped at the Grocery 24 times and on her 2013 tax return, she deducted $120 (24 times $5) as a charitable contribution. Can she deduct this amount?

Answer to Example 8. No.

Code Sec. 170(f)(17), enacted in 2006 as part of the Pension Protection Act ("PPA"), provides that no charitable deduction is allowed for any contribution of cash, check, or other "monetary gift" unless:

1. The donor maintains "bank record" as a evidence of the contribution; or
2. A written communication from the donee showing the donee organization's name, the date of the contribution, and the contribution amount.

Thus, cash contributions (not by check) are not deductible unless the donee/charity sends a notice to the donor showing the name of the charity, the date of the contribution and amount contributed. This rule applies to cash contributions of any amount, however small. There is no "de minimis" exception. If a cash contribution was made of more than $250, then the contemporaneous written acknowledgment of §170(f)(8) should be given.

Contributions by check can even be problematic. The bank statement listing the check number, amount and date is not sufficient if the donee charity is not identified. Various "bank records" are permissible if they show the donee name, date of contribution and amount. Other bank records showing this information such as a credit card statement,

scanned image of both sides of a cancelled check from the bank's web site, an electronic funds transfer receipt such as from a debit card statement are also acceptable "bank records" if they show the required information.[52] If there is no "bank record," then notification from the charity is acceptable if it shows the required information.

The Proposed Regulations (not yet effective) state:

1. That notification by the charity by email is sufficient.[53]

2. That substantiation by the charity must be received by the donor on the earlier of the date the donor files his return for the year of the contribution, or the due date of the return.[54] Thus, for donors who are relying on notification from the charity rather than bank records, the notification should be sent as soon as possible.

3. The Proposed Regulations also contain rules for contributions by payroll deduction[55]

Contributions Totaling more than $250.

Example 9. In 2013, Mr. and Mrs. Generous made four quarterly $300 payments by check to Valley Charities, a qualifying §170(c) organization. They received no contemporaneous written acknowledgment from the charity. Can Mr. and Mrs. Generous deduct the $1,200 paid in 2013?

Answer to Example 9. No.

The law is crystal clear that no charitable deduction is allowed for any charitable contribution of $250 or more unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgment meeting the requirements of §170(f)(8)(B). The Tax Court has so held.[56] The notice requirements of §170(f)(8)(B) are:

1. A written acknowledgment;

2. Stating the amount of cash contributed;

3. Stating whether any goods or services were provided in consideration for the contribution (and a good faith estimate of the value if goods and services were provided);

4. The notice must be contemporaneous.

The Generous' cannot rely merely on the bank record as they could with checks of less than $250. If the Generous' paid $100 per month for 12 months instead of the larger quarterly

[52] Prop Regs § 1.170A-15(b)(2)
[53] Prop Regs § 1.170A-15(b)(3)
[54] Prop Regs § 1.170A-15(c)
[55] Prop Regs § 1.170A-15(d)(2)
[56] Pieter Weyts v. Commissioner, TC Memo 2003-68

payments, the notice requirements of §170(f)(8) would not apply. Regs.1.170A-13(f)(1) states:

> "Separate contributions of less than $250 are not subject to the requirements of section 170(f)(8), regardless of whether the sum of the contributions made by the taxpayer to a donee organization during a taxable equals $250 or more."

Failure to meet all of the conditions of §170(f)(8) results in total denial of the deduction. Thus, where the acknowledgment failed to disclose the consideration received for the contribution, the taxpayers weren't entitled to a partial deduction.[57]

Information Reporting Is Taxpayer Responsibility. For gifts in excess of $250, §170(f)(8) doesn't place an information-reporting duty on charities. Rather, where an acknowledgment is required, it's the taxpayer's responsibility to get one from the charity and keep it in his records.[58]

Recent Cases Illustrate That the Contributions of more than $250 Will be Disallowed If The Substantiation Requirements Are Not Met.

1. In Addis,[59] a charitable organization gave the taxpayers a written acknowledgment stating that no goods or services had been provided in consideration for a large cash contribution. The Commissioner investigated further and learned that the taxpayers actually had been provided with services by the charitable organization and that the value of the services had been intentionally misrepresented on the written acknowledgment. As a result, the taxpayers' charitable contribution deduction was disallowed.

2. Even though the Tax Court believed taxpayer donated $6,500 to his church in 2005, no deduction was allowed because the letter he received from the church wasn't contemporaneous. It was dated Jan 22, 2008, the date of taxpayer's trial. It also included only the amount of the donation and didn't state whether goods or services were provided in return.[60]

3. Taxpayer's argument that it satisfied the donee's written acknowledgment requirement by having the donee sign the Form 8283 attached to the return was

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57 *Addis, Charles H. v. Com*., (2004, CA9), 374 F3d 881, affg' (2002) 118 TC 528; *Cohan, Marshall*, (2012) TC Memo 2012-8

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58 S Prt No. 103-36 (PL 103-66) p. 222

59 *Addis*, 118 TC 528 (2002)

60 *Gomez, Daniel*, (2008) TC Summary Opinion 2008-93

rejected. Missing was a statement that no goods or services were provided by the donee.[61]

4. In *Marshall Cohan*,[62] the taxpayer claimed a charitable deduction for the portion of the payment that exceeded the amount of the benefit received. The charity gave a "gift letter" to the donor, but intentionally excluded some items that benefited the donor so as to increase the donor's charitable deduction amount. The Tax Court found that the letter provided by the charity did not contain a good faith estimate of the benefit received as required by Section 170(f)(8). A substantial compliance argument that deduction should still be allowed because amount omitted was relatively minor was rejected.

5. In *David Durden*,[63] the taxpayer in 2007 wrote various checks to his church totaling approximately $25,000. All the checks were in an amount in excess of $250. The church provided a timely written acknowledgment of the contribution, but it did not state in the notice that no goods and services were provided. In 2009, the IRS disallowed the contribution deduction for failure to comply with Section 170(f)(8). The taxpayer then claimed that their checks to the church were adequate substantiation to justify the tax deduction. The IRS position was that under Section 170(f)(8), the taxpayer should also have an acknowledgment from the charity that no goods and services were provided in consideration for the contribution. The taxpayers then obtained a statement from the church at no good and services were provided. The IRS claimed that the notice from the church was not "contemporaneous" under the statute. The Court upheld the IRS disallowance. The Court states that strict compliance with all the notice provisions of Section 170(f)(8) is necessary for the effective administration of the tax laws. "The essential statutory purpose of the contemporaneous written acknowledgment required by section 170(f)(8) is to assist taxpayers in determining the deductible amounts of their charitable contributions and to assist the Internal Revenue Service in processing tax returns on which charitable contribution deductions are claimed."
6. In Linzy,[64] the Tax Court denied the charitable deduction finding that receipt from charitable organization did not constitute contemporaneous written acknowledgment because it did not state whether taxpayer received any goods or services in exchange for her contribution.

7. In *Jolene M. Villareale*, [65] in 2006, the taxpayer made 44 contributions to a qualifying charity totaling approximately $10,000. 17 of the 44 contributions were by electronic transfer in an amount over $250. The donee, dates and amounts were noted on the taxpayer's bank records. However, the IRS

[61] Friedman, Newton J., (2010) TC Memo 2010-45
[62] *Cohan*, TC Memo 2012-8
[63] *Durden*, TC Memo 2012-140
[64] *Linzy*, TC Memo 2011-264
[65] *Villareale*, TC Memo 2013-74.

argues that petitioner was not entitled to deduct the contributions of more than $250 because none was substantiated by a contemporaneous written acknowledgment as required by Section 107(f)(8). Petitioner argued that her bank statements were sufficient to substantiate her contributions. The Tax Court also rejected the taxpayer's argument of substantial compliance to allow the deduction. The Court found that the taxpayer was not entitled to deduct contributions to the church of $250 or more.

8. Several 2013 Tax Court cases have denied the charitable deduction of amount over $250 for lack of a contemporaneous written acknowledgment conforming strictly to Section 170(f)(8).[66]

IRS Publications Regarding Complying With Substantiation Requirements.

1. A taxpayer can't file an amended income tax return to claim a charitable contribution deduction if the taxpayer got the contemporaneous written acknowledgment for the contribution after timely filing the original return. A written acknowledgment received after a taxpayer files the original return for the year of the contribution isn't contemporaneous.[67]

2. A donor pledge form isn't a contemporaneous written acknowledgment of a contribution, regardless of the information included on that form.[68]

Alternative to Substantiation. Code Sec. 170(f)(8)(D) provides that if a charity files a return with IRS, under regs to be issued, reporting information sufficient to substantiate the contributions, that the taxpayer need not have a contemporaneous written acknowledgment in order to deduct contributions in excess of $250.

Special Rule for Churches. If a taxpayer makes a contribution to his church, synagogue or the like of more than $250, in order to deduct that amount he must meet the requirements of Section 170(f)(8) , i.e. a contemporaneous written acknowledgment from the church stating the amount and that no goods or services were supplied. If goods or services were supplied, then the contemporaneous acknowledgment must describe the goods and make a good faith estimate of their value. However, Section 170(f)(8)(B)(iii) states that if the goods and services consist solely of "intangible religious benefits," then the notice must so state. I interpret this provision to require the contemporaneous written acknowledgment from a church contain a notice with the following or similar language:

> "Thank you for your contributions to [___] church for 2013 which totaled $2,500. No goods and services were supplied other than intangible religious benefits"

[66] *Brooks v Com*, TC Memo 2013-141; *Humphrey v. Com* TC Memo 2013-198; *Villareale v. Com* TC Memo 2013-74
[67] Preamble to TD 8690, 12/13/96
[68] IRS Letter Ruling 200003005