

Your Charitable Contribution Deduction - Don't Give It Away!

Taking a charitable contribution deduction is one way to lower your taxes. However, it is important that your documentation support the deduction. The IRS is taking more interest in the charitable deductions of individuals. I speak from personal experience; I was audited specifically for my charitable contributions.

The rules for substantiating the deductions have become increasingly complex. The following attempts to steer you through the maze of rules so that you don't give away your charitable contribution deduction.

The recordkeeping and filing requirements for charitable contribution deductions vary based on whether the contribution is made in cash or property and the amount of cash or the value of the property contributed. A donor will not be allowed any deduction for a contribution of cash, by check, or any other monetary gift regardless of the amount unless the donor retains either (1) a bank record that supports the donation or (2) a written receipt or communication from the charity showing the name of the donee organization, date, and amount of the contribution.

Donors must also get a written acknowledgment from the charity if the value of the contribution (in cash or other property) is \$250 or more—a canceled check or other reliable records are not sufficient proof. The acknowledgment must be obtained no later than the due date of the tax return for the year the contribution was made. If the return is filed before the due date, the donor must possess the acknowledgment when the return is filed. If the required written acknowledgment is not properly completed and timely obtained, the charitable contribution can be disallowed in its entirety.

The written acknowledgment must also contain a statement of whether or not the donee organization provided any goods or services in consideration, in whole or in part, for any of the cash or other property transferred to the donee organization. If a donor received anything from the charity in return, the acknowledgment must include a good faith estimate of the value of the goods and services the donor received (for example, the value of a charity dinner dance or athletic event tickets) and a disclosure that only the “net” amount is deductible. If only intangible religious benefits (for example, admission to a religious service) are received, the acknowledgment should so indicate, and nothing further needs to be disclosed.

Just as the lack of a written acknowledgment can lead to the disallowance of the charitable deduction, so too, can the failure to disclose that goods or services were received. IRS has been successful in disallowing the entire amount contributed even in circumstances where only a token amount was received for the gift.

Each donation is viewed as a separate contribution, regardless of whether the total contributions made by the taxpayer to a donee organization reaches the \$250 substantiation limit. The IRS is authorized to issue rules regarding multiple donations of

less than \$250 if they are made to avoid the substantiation rules. However, the regulations currently do not contain an anti-abuse provision.

Special rules apply for contributions made by payroll deduction. These rules allow taxpayers to substantiate their contributions with two documents: (1) a pay stub, Form W-2, or other document furnished by the employer that shows the amount of the contribution withheld from the employee's pay during the year; *and* (2) a pledge card or other document prepared by or at the direction of the charity that includes a statement indicating the organization does not provide goods or services in return for donations made by payroll deduction.

When a taxpayer donates property valued at more than \$500, Form 8283 (Noncash Charitable Contributions) must be attached to the return. The taxpayer must also keep written records that include the information listed earlier in this key issue for documenting property contributions valued at less than \$250, plus report on Form 8283 how and when the property was acquired, and its basis or cost. If the taxpayer cannot provide the cost basis or acquisition date and has reasonable cause for not doing so, an explanatory statement must be attached to the return.

A donor who contributes property valued at more than \$5,000 during the tax year, except for publicly traded securities, must obtain a qualified written appraisal and attach to his return a completed Section B of Form 8283 (Appraisal Summary) signed by the appraiser and the donee organization. For nonpublicly traded securities, a written appraisal is required only when the deduction claimed exceeds \$10,000. The \$5,000 threshold is applied per item or per group of similar items (i.e., items of the same category or type, such as stamp collections, books, paintings, lithographs, nonpublicly traded stock, land, or buildings). For example, a donation of five tracts of raw land, each valued at \$1,500 would be considered a property donation of more than \$5,000.

An appraisal is not required for contributions of publicly traded securities that have market quotations readily available. For this purpose, market quotations are readily available if the security is: (1) listed on the New York Stock Exchange, the NASDAQ, or any other exchange where quotations are published on a daily basis, (2) regularly traded in the national or regional over-the-counter market, or (3) a share of a mutual fund where quotations are published on a daily basis throughout the U.S. These publicly traded securities are reported only on Section A of Form 8283, regardless of the amount of the donation.

In the case of a contribution of an auto, boat, or airplane (other than inventory), the claimed value of which exceeds \$500, no deduction is allowed unless the taxpayer (1) substantiates the contribution by a contemporaneous written acknowledgement from the donee organization containing specified information and certification(s); and (2) includes the acknowledgement with the tax return on which the deduction is claimed. Proposed IRS regulations would provide that the donor would have to attach a copy of the acknowledgement to the Form 8283 (Section A) for the return on which the deduction is

claimed. The above substantiation rules apply instead of the substantiation rules for charitable contributions of \$250 or more.

If a charitable organization that has received a contribution of a qualified vehicle valued at more than \$500 sells the vehicle without any significant intervening use or material improvement, the acknowledgement it provides to the taxpayer must include:

- (1) the taxpayer's name and taxpayer identification number (TIN);
- (2) the date of the contribution;
- (3) the vehicle identification number or similar number;
- (4) a certification that the vehicle was sold in an arm's length transaction between unrelated parties;
- (5) the date the vehicle was sold;
- (6) the gross proceeds from the sale;
- (7) a statement that the deductible amount may not exceed the amount of the gross proceeds;
- (8) whether the donee organization provided any goods or services in consideration, in whole or in part, for the qualified vehicle;
- (9) a description and good-faith estimate of the value of those goods or services or, if the goods or services consist solely of intangible religious benefits;

Until the IRS revises Form 1098-C to include the information about goods and services in items (8) and (9), above, an acknowledgment will be treated as meeting the requirements of Code Sec. 170(f)(12)(B) even if it doesn't contain that information.

The donee organization must provide the acknowledgement within 30 days of the sale of the qualified vehicle in order for it to be "contemporaneous."

These are just some of the rules relating to charitable contributions. More rules exist for contributions of appreciated artwork, for gifts in excess of \$500,000, for donations in certain trust forms, etc.

The IRS stands ready to disallow your deduction. Proper planning can help preserve the deduction that can save you tax dollars.

How did my audit turn out? No change, but not without considerable effort and consternation. Knowing how lawless the IRS can be, we are ready to help you preserve your deduction. Contact us if you want more info on how to give and keep your charitable deduction.