

C H A R I T A B L E G I V I N G

A L E R T

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2012GOOD DONOR STEWARDSHIP —
ACKNOWLEDGING CONTRIBUTIONS*By Marla K. Conley and Barbara E. Little*

As we move into the height of this year's charitable giving season, we respectfully remind our clients of the IRS' very strict view, and recently reiterated emphasis, on providing donors with proper paperwork substantiating contributions. When a charity fails to issue certain documentation or disclosures, the IRS may deny the donor a tax deduction for his or her generous contribution.

The IRS imposes these requirements strictly — the charity must include the proper language verbatim, and substantial compliance is insufficient. Merely acting in a manner consistent with the intent of the IRS requirements can still result in denial of a tax deduction for the donor. The IRS reiterated the importance of strict compliance, and the consequences of a charity's failure to comply, earlier this year in *Durden v. Commissioner*, TC Memo 2012-140. In *Durden*, the IRS disallowed a charitable deduction of \$25,000 because the taxpayer was unable to produce a contemporaneous written acknowledgment substantiating the contributions.

In order to qualify for a tax deduction in most cases, the taxpayer must receive from the charity a written acknowledgement that provides the amount, if the gift is cash, or a description, if the gift is other than cash, of the contribution. The written acknowledgment must be contemporaneous, generally meaning the donor receives it before the day the donor files his or her tax return for the year of the contribution.

So long as the donor did not receive any benefit in exchange, it is critical that the acknowledgement explicitly state "no goods or services were provided in return for the contribution." Failing to include this one line can alone defeat the donor's deduction.

The exact paperwork and language a charity must provide to a donor varies depending on the nature of the contribution. For example:

1. A donor needs at least some documentation in order to claim any deduction against his or her income taxes for a charitable contribution. Although it is technically the taxpayer's obligation to obtain this documentation, and the donor may use a bank record for certain monetary contributions less than \$250, the charity should anticipate this need and timely provide the donor with the contemporaneous written acknowledgment rather than waiting for the donor to ask.
2. If the donor's contribution exceeds the \$250 threshold, the donor must have a contemporaneous written acknowledgment in order to take the deduction.
3. Where a donor makes a contribution in excess of \$75 and the charity provides a benefit to the donor in exchange, this is known as a "quid pro quo donation," and the burden of providing proper documentation shifts to the charity. A charity that fails to provide this paperwork may be subject to a penalty tax of \$10 per contribution, up to \$5,000 per event or mailing.

Generally, the donor is only eligible for a tax deduction to the extent that the value of the donor's contribution exceeds the value the charity provides in exchange. There are certain exceptions, such as where the benefit the donor received in exchange was merely a token gift or membership benefits.

For a quid pro quo donation, therefore, the charity must provide a donor with a good-faith estimate of the fair market value of the goods or services the donor received so the donor can determine what portion of his or her overall contribution is deductible. The charity must specifically inform a donor that the amount of the contribution that is deductible for federal income tax purposes is lim-

(continued on page 2)

(continued from page 1)

ited to the excess of money (and the fair market value of property other than money) contributed by the donor over the value of goods or services provided by the organization. As an equation, this is expressed as:

$$\frac{\text{Value of Donation from Donor}}{\text{Value of Goods and Services Provided by Charity}} \\ \leq \text{Charitable Deduction Amount Allowed}$$

4. Certain unique reporting rules apply to in-kind contributions of items such as cars, boats, and airplanes or items that the charity sells or does not actively use in its charitable programs.

IRS Publication 1771, available at: <http://www.irs.gov/pub/irs-pdf/p1771.pdf>, explains the general rules for providing donors with contemporaneous written documentation. This publication also provides helpful sample language that charities may use in drafting letters to donors.

Although this *Alert* describes federal requirements monitored by the IRS, many states also require charities to include specific written disclosures when soliciting or acknowledging a gift. Charities should consider the state in which they operate, as well as the states in which donors and potential donors are located, when addressing these requirements.

Developing a fundraising system that consistently issues the necessary paperwork is a key aspect of building strong donor relationships and a culture of donor stewardship. In particular, charities should have a checklist system that requires the charity to issue each donor a contemporaneous acknowledgment for any donations. ♦

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To learn more about raising or managing charitable contributions, including providing substantiation documentation, negotiating or removing donor-imposed restrictions, or offering corporate sponsorship or planned giving opportunities, please contact an attorney in our Nonprofit Organizations Practice Group:

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