



## DON'T LET IRS COMPLIANCE RUIN A CHARITABLE DONATION

By Daren J. Layton

Americans should be proud of themselves. According to Charity Navigator, Americans gave \$410 billion to charitable organizations in 2017 (that's over \$1 billion per day). For many donors, the desire to help make a difference in the world comes naturally, but most also want to take advantage of the benefits and incentives provided by the Internal Revenue Code.

Donors rarely think about obtaining a receipt for their charitable contribution, and very few are aware of the various substantiation requirements that may be required for them to claim a charitable deduction for tax purposes. The type of property donated to a charitable organization will determine the substantiation requirements for a donation to qualify as a charitable contribution deductible by the donor. Over the years, the IRS and courts have strictly applied the substantiation requirements to deny even the best intentioned donors from claiming a charitable deduction. The following is a brief overview of the substantiation requirements for some types of property.

Quid Pro Quo Donations. Although there are some exceptions, as a general rule a charitable organization must provide a donor with a written disclosure statement for *quid pro quo* donations in

excess of \$75. A *quid pro quo* donation occurs when a donor makes a payment to a charity that is partly a charitable donation and partly a payment for goods and/or services (e.g., purchasing a tickets to a charity gala). The disclosure statement must inform the donor that the deductible amount of the donation is limited to the amount by which the donation exceeds the value of goods/services provided by the charity. The statement also must provide a good faith estimate of the value of the goods and/or services.

AS RECENT TAX COURT CASES  
HAVE DEMONSTRATED, THE  
SUBSTANTIATION REQUIREMENTS  
FOR CHARITABLE CONTRIBUTIONS  
ARE STRICTLY ENFORCED

Contemporaneous  
Written Acknowledgements.  
“Contemporaneous written acknowledgement” (CWA) is required only for a single charitable donation equal to or greater than \$250, but it is a good practice to provide a donor with a CWA with each donation made. A

CWA must contain the following information: (i) the name of the charitable organization; (ii) the amount of cash donation; (iii) a description of non-cash donation; (iv) a statement that no goods or services were provided by the organization, if that is the case; (v) a description and good faith estimate of the value of goods or services, if any, that organization provided in return for the donation; and (vi) a statement that goods or services, if any, that the organization provided in return for the donation consisted entirely of intangible religious

HAVE AN IDEA FOR THIS NEWSLETTER? E-MAIL [MINGLE@FLEMINGANDCURTI.COM](mailto:MINGLE@FLEMINGANDCURTI.COM)

OR FOR A PRESENTATION OR PRESENTER? E-MAIL: [AMYR@HABITATTUCSON.ORG](mailto:AMYR@HABITATTUCSON.ORG)

benefits, if that was the case.

It is not uncommon for organizations to include language such as “this donation is deductible to the fullest extent provided by law.” While including this or similar language may be appropriate, it is not sufficient and will not qualify an acknowledgement as a CWA.

To be “contemporaneous” the CWA must be obtained by the donor no later than the date the donor files the return for the year the donation is made.

The failure of a donor to obtain a CWA prior to filing a return or the failure of the charity to include the required information in the CWA will disqualify the donation from being deductible as a charitable contribution.

For example, the U.S. Tax Court held that a donor was not allowed to claim a \$64 million charitable donation because the letter from the charity acknowledging the donation did not state whether the charity had provided any goods or services to the donor or whether the charity had otherwise provided anything of value to the donor, in exchange for the donation (see *15 West 17th Street LLC v. Commissioner*, 147 T.C. No. 19).

Similarly, a married couple made cash donations to their church totaling more than \$25,000, and the U.S. Tax Court determined that they were not allowed a charitable deduction for the donations because the church’s acknowledgment did not include language regarding whether any goods or services were provided in consideration of the donation. After learning that the CWA lacked the proper language, the donors requested and received a second acknowledgment from the church with the correct language. However, the donors obtained the letter after filing their tax return so it was not considered

to be “contemporaneous” (see *Durden v. Commissioner*, T.C. Memo 2012-140).

This second case demonstrates the importance of double and triple checking that the CWA is provided to the donor with the correct information because any error will not likely be discovered until it is too late to be remedied.

*Noncash Contributions of More Than \$500 But Less Than \$5,000.* When a donor contributes property with a fair market value of more than \$500 but less than \$5,000, the donor must complete Part A of IRS Form 8283 to claim a charitable deduction. It is important to remember that this requirement is in addition to, and not a substitute for, a CWA.

*Noncash Contributions of \$5,000 or More.* When a donor contributes property with a fair market value greater than \$5,000, the donor must obtain a qualified appraisal from a qualified appraiser and complete Part B of IRS Form 8283, which must be signed by the donee, to claim a charitable deduction. Again, it is important to remember that these requirements are in addition to, and not a substitute for, a CWA.

Charitable deductions are a matter of legislative grace, and such grace can be denied when substantiation requirements are not properly followed. Making an extra effort to comply with the substantiation requirements upfront might save a deduction from being denied.

---

Daren J. Layton is an attorney at the law firm Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C., 5210 E. Williams Circle, Suite 800, Tucson, Arizona 85711; 520-745-7815; [www.waterfallattorneys.com](http://www.waterfallattorneys.com). E-mail: [dlaytons@waterfallattorneys.com](mailto:dlaytons@waterfallattorneys.com)

### FOR YOUR CALENDAR

**Oct. 2:** Breakfast Meeting, 7:30 a.m., Arizona Inn, Intergenerational Transfer of Wealth, Angie Laskarides, Regional Director, Arizona Community Foundation.

**Oct. 16:** Education Symposium, 9 am to 4 pm, Pima Community College Downtown Campus

**Nov. 6:** Breakfast Meeting, 7:30 am, Arizona Inn, How to Avoid Pitfalls in Planned Giving with Jonathon G. Tidd, Attorney