IRS Rules and Regulations:
What You Need to Know to Stay Out of Trouble

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Nearly every nonprofit in the United States conducts fundraising activities of one kind or another. These range from seeking small gifts via direct mail to sponsoring fundraising banquets to soliciting large donations through a complex planned giving program. To conduct these activities successfully, the development professional must understand the IRS regulations that apply to a 501(c)(3) organization, both to protect the tax-deductible nature of the donations and to shield itself and donors from IRS penalties.

Although it may be hard to believe, the IRS rules and regulations discussed in this chapter were not developed solely to torture development professionals. These rules are intended to guard against income-tax fraud by donors. Unfortunately, the complexity of these rules can also trap the unwary. If you take the time to master the tax rules regarding the three key parts of a charitable contribution, you should be able to comply with IRS requirements. This chapter will help you make sense of basic IRS rules that determine exactly what makes an individual or corporate gift a tax-deductible, charitable contribution. For income-tax purposes, the three key aspects of a charitable contribution are:

- The contribution itself, since only certain types of donations qualify as tax-deductible, charitable contributions
- The organization, because a tax-deductible, charitable contribution must be made to a qualified recipient organization
- The receipt, since the donor must be able to substantiate the charitable contribution, as the IRS requires

The Contribution

To be considered a contribution for income-tax purposes, the gift must involve the transfer of money or property to a qualified charitable organization. Gifts of cash or stock are obvious examples of the types of gifts that qualify as tax-deductible, charitable contributions.

If you work for an organization that receives only cash gifts, you can stop reading here and skip to the next section. If you are not that lucky, however, it is important to identify what types of transfers to nonprofits fail to qualify as tax-deductible charitable contributions. A fundraiser who inadvertently gives a donor incorrect information about tax deductibility risks bringing the wrath of the IRS upon both the organization and the donor who claimed the deduction.

Here are common types of contributions that do not qualify as tax-deductible, charitable contributions:

- Payment for a raffle ticket
- Payment earmarked for lobbying activities
- Payment that is earmarked for an individual, regardless of the charitable nature of the payment

Time

Volunteer time is not considered a gift for tax purposes. For example, an attorney who gives your organization pro bono legal advice may not take a charitable deduction for the billable value of that time. However, a volunteer may deduct out-of-pocket expenses, such as mileage, parking, or supplies.

Conditional Gifts

A gift that is conditional on a future event also does not qualify as a tax-exempt contribution. For instance, if a couple gives a painting to a university but keeps it for three months before moving it to campus, the gift is not official until the painting is transferred to the university. Or a donor transfers stock to a charitable organization but retains voting rights over the stock until the end of the year. The gift is not complete until the charitable organization has control and ownership of the stock. *(See Gifts of Securities, page 139.)*

Gifts of Securities: Steps to Ensure Timely and Responsible Receipt

In many institutions of higher education, the receipt and processing of gifts of securities and mutual funds are left to the accounting or treasurer's office. The thought is that they are the only ones authorized to determine when to sell the asset; therefore, they should handle its receipt. This may be fine from a purely administrative perspective, but this policy often gives rise to serious donor relations issues.

Occasionally, when a business office handles the receipt and processing of gifts of securities, it does so in the context of a business transaction. The office tends to be more concerned about the asset—and selling or investing it—than about donors. This can lead to the opening of numerous brokerage accounts across the country, sometimes with the institution's authorization, sometimes without, to facilitate the transfer of a gift within the brokerage firm. Frequently the business office first realizes that a gift has been made when it receives a statement or check from that firm. Therefore a minimum of 30 days might pass before an acknowledgment can be sent to the donor. And if the business office did not have prior knowledge that a gift was going to be made, it might never determine from whom the gift came. The development office finds out when the donor calls to complain that the donor never was thanked!

To eliminate this donor relations problem without removing the responsibility for the actual sale or investment of assets from the business office (and actually enhance its control), I suggest the following:

1. Close unnecessary brokerage accounts. Ideally there should be a single account at a brokerage firm or bank for the receipt of gifts of securities. You should have online access to your gift account. This could be either a true online, real-time ability to look at gift activity or the ability to download, on a daily basis, a report reflecting gift activity from the previous day. As mentioned above, donors and brokers open many accounts without proper authorization from the nonprofit organization. But even if the nonprofit has authorized the opening of such accounts, they are unnecessary.

In today's world the transfer of stock can take place electronically the same day to any account in the country. The consolidation of all activity in a single account gives you both greater control and a stronger hand to negotiate a reduced brokerage fee. Certainly, situations arise when it is prudent to keep an account or two open (the major donor's brother-in-law is the broker; the broker is a highly regarded alumnus), but these should be few and far between.

2. Inform donors of the change in procedure. Your database should be structured so that all gifts of securities can be readily identified. In most advancement systems, a unique payment type to identify stock gifts does this. Using this identifier, obtain the name and address of any individual who has donated stock within the past three years. A short letter should be sent to these individuals, indicating that you are changing your procedures for accepting gifts of stock and that if they wish to contribute securities in the future, they or the broker should contact your office for the most current electronic delivery (DTC) instructions. You should not publish these instructions anywhere—not in the letter, not in a brochure, not on your Web site. Nor should you disseminate them to your development officers. The entire organization simply should be told that if donors ask how to make a gift of stock, they should be referred to your office. You might consider publishing a flier that outlines your preference for DTC and asks donors to contact your office in such a case, but also explains how to physically deliver certificates.

3. Develop a tracking system. When stock is sent by DTC, it rarely carries the name of the donor. All you "see" is the name of the security, the number of shares, and the firm initiating the DTC. Your task, then, is to match a gift with a donor. Therefore, you must know ahead of time which donor is sending what. Hence the prescribed procedure of having the donor or broker contact you first. When contacted, and before releasing the DTC instructions, you should obtain the donor's name; brokerage firm; name, phone, and fax number of broker or agent; name of stock and number of shares (or approximate target dollar amount); and purpose of gift. The information should be recorded in a searchable database. This is important for two reasons. First, even though you will tell the donor or broker always to contact your office in the event of future

stock gifts to confirm the transfer instruction, you will run into the occasional donor or broker who will send a gift without informing you first. By retaining information concerning prior gifts in a searchable format, you can query the database when a "rogue" gift comes in. Often, a donor will send the same stock a second time. Second, you can and should query the database on a regular basis to identify notifications of gifts that are more than a week old and have not been received. A follow-up call might be appropriate.

4. Communicate with your broker. It is important that your broker know what gifts are expected. This way, should she receive an unexpected gift, she can raise a flag more quickly. The easiest way to alert her as to what is coming would be to fax a copy of your tracking sheet to the firm. Ideally, when gifts are received, your broker will match the stock with a tracking sheet and append the donor's name to the report of gifts she prepares for you. If a match cannot be made, your broker should communicate this information to you immediately by phone, fax, or e-mail. The brokerage should provide you with the name of the transfer agent (firm), the name of the stock and number of shares, and the approximate gift amount. With this information, you can query your database and check other internal sources to identify the donor.

5. Return unknown gifts. It is important that gifts whose donor you cannot identify be returned immediately. Do not "hold" these transfers for more than 48 hours. The gift may not belong to you! For tax purposes, have your broker add a comment to the DK (Don't Know), requesting the initiating firm to contact your office immediately upon receipt of the returned shares. As long as they contact you before crediting the shares back to the donor's account—and you can ascertain who the donor is and have the shares re-sent—the donor still should be able to claim the original date of transfer as the gift date. The donor never regained control of the asset. The donor will need to confirm this with a tax adviser.

6. The donor and department should receive equal credit. Certainly, your donor should receive gift credit equal to the legal value of the gift. So, too, should the department benefiting from the contribution. This should occur regardless of brokerage fees or whether the stock is ultimately sold for a gain or at a loss. That

is simply the price of doing business. Therefore, all proceeds from sales of stock (excluding restricted or closely held stock) should be credited to a single "clearing" account. You then debit this account for the legal amount of the gift and credit the benefiting department. Ideally, your general ledger interface will automate this process. The clearing account will absorb all fees, gains, and losses. It can be proven that over a period of years, the net is always a positive one. The institution can determine how often, if at all, to flush this account and transfer the net to a spending account.

7. Closely held and restricted stock requires different accounting. In these cases the timing of sale is beyond the institution's control. Although the donor should certainly receive gift credit equal to the legal value of the stock, it would not be appropriate for the institution to absorb the potential loss resulting from sale in its clearing account. The exposure is too great. Therefore, the benefiting department should be contacted first to determine if it wishes to accept the closely held or restricted stock, understanding that it might not realize the "legal" amount of the gift. Usually it will—something is better than nothing! When the stock is ultimately sold, all proceeds should be credited directly to the department.

8. Outline procedures for physical delivery of stock. Many donors own physical shares of stock not held in a brokerage account. These shares cannot be delivered electronically. Be prepared to advise the donors of safe and efficient methods available to deliver these shares. The first would be to hand-deliver the certificate to the institution and "endorse" the shares over to it in the presence of an official of the institution. A second way would be to mail the unendorsed certificate and a "signature guaranteed" stock power to the institution in separate envelopes. The donor should be advised that the legal date of gift in these cases is the later postmark date on the two envelopes. If a third party such as Federal Express delivers the stock, the correct date is the date of receipt by the nonprofit. Some donors prefer to skip the stock-power step and would rather sign the certificate over and then mail it. If they do, suggest that they complete the line indicating the name of the institution receiving the gift. You also may recommend that the donor use certified or registered mail in this case. A final method

available for delivery of physical shares is for the donor to send the certificate back to the issuing corporation and have a certificate issued in the recipient's name. This is not advisable because it significantly delays turnaround time. Furthermore, the legal date of gift in such cases is the date the certificate is registered in the name of the receiving institution. That date could be weeks or months before the donee has physical possession of the certificate.

9. Mutual fund donations require alternate procedures. More often than not, mutual funds cannot be transferred by DTC, but only to a like account and then sold. Therefore educate your donors that to make a gift of a mutual fund, they should begin well before the end of the year. It could take a month to complete the paperwork to open an institutional account with that firm. And your business office or other department authorized to establish banking and financial institution relationships will have to be involved. Once the account is opened, provide the donor with your account number and the donor can initiate the transfer. Although your business office probably will instruct the firm to sell the shares upon receipt, do not close the account. Rather, develop a list (in alphabetical order) of mutual fund accounts that have been opened, including account number, client number (if applicable), and contact phone number. You never know when another, or the same, donor will wish to transfer shares in the same fund.

10. Don't forget the receipt! The IRS regards gifts of appreciated assets, such as stocks and bonds, as property. (see IRS Publication 561). In theory, then, only a description of the asset given is required on the receipt, per IRS Publication 1771. However, many donors transfer these assets to satisfy an existing pledge—they want to know how much might be outstanding. It might be appropriate to state a value indicated as "for internal purposes only" in addition to the description. You might also enclose a disclaimer with the receipt and direct the donor to seek professional tax guidance. Remind donors that they might need to file IRS form 8283 to claim this gift as a deduction. In most cases, the receiving organization does not need to sign the 8283 for gifts of securities.

—John H. Taylor, Principal, Advancement Solutions

Use of Property

The use of a donor's property by a charitable organization does not qualify as a tax-exempt contribution. For example, if a donor allows a charity to use his beach house without paying rent, the donor is not allowed to deduct the fair market value of the rent as a contribution to the charity.

Quid Pro Quo

A quid pro quo contribution is not a tax-deductible contribution. If donors receive something in exchange for their contributions, then only part of the amount paid is tax-deductible. The most common example is a fundraising dinner; in return for contributions, donors receive the right to attend a fancy (or not so fancy) social event. The only part of this "contribution" that the IRS considers tax-deductible is the amount paid over the fair market value of attending the event. Another example of a quid pro quo contribution is payment for an item at a charitable auction. (The disclosure requirements imposed on charities with respect to quid pro quo contributions are discussed below.)

Token Gifts

Under certain circumstances, when donors receive a small item or a benefit of token value, the entire amount of the contribution is fully deductible. A benefit is considered a token if:

- The payment occurs in the context of a fundraising campaign in which the charity informs contributors what amount constitutes a deductible contribution; *and*
- The fair market value of the benefits received is not more than 2 percent of the payment, or $89, whichever is less; *or* the payment is $44.50 or more and the only benefits received are token items bearing the organization's name (such as a mug or T-shirt). The cost (not fair market value) of all of the items received must be less than $8.90.[1]

[1] Rev. Proc. 2006-53 (11/9/2006). These amounts are indexed each year for inflation and are current for 2007 contributions. The IRS releases updated amounts for the next tax year in November or December of each year.

Tickets

Certain parts of a payment by a donor for the right to purchase tickets to athletic events are not considered gifts. Under IRS regulations, 80 percent of such payment is treated as a charitable contribution and 20 percent as a payment for the right to purchase the tickets. For example, if a donor pays a university $400 for the right to purchase basketball tickets, the substantiation receipt the university furnishes must show that the taxpayer received a benefit of $80 for the right to purchase the tickets. The taxpayer may then treat $320 as a tax-deductible, charitable contribution.

Promotions

Payment to a charity for publishing or otherwise publicizing a gift acknowledgment that includes an endorsement or other comparative language concerning a donor's products or service are not considered charitable gifts. In a case like this, the amount is considered a payment for advertising rather than a charitable contribution. This is true unless the payment is considered a "qualified corporate sponsorship payment" under IRC 513(i) and its interpreting regulations. If a corporation's payment qualifies as a "qualified corporate sponsorship payment," the IRS will consider it a charitable contribution. To qualify for a deduction, the corporate contributor may receive an acknowledgment of the contribution from the charity, but any further language will be considered advertising. To comply with this regulation, a charity may divide a single payment by a corporate sponsor between a qualified sponsorship payment and a payment for advertising services.

Clearly, IRS regulations about deductibility are many and varied. But other issues come into play as well.

One important issue is the question of when the charitable gift occurs. Although this seems easy, determining it can become quite complicated because of the many different forms the gift may take. The basic rule is that a charitable gift is complete when the charity receives the cash or property. However, the IRS has stated that a charitable gift made by check is complete at the time the check is delivered or mailed, provided the bank eventually honors the check.

One important issue is the question of when the charitable gift occurs.

For example, a check mailed December 30, 2006, would be considered a 2006 charitable contribution, even though the nonprofit did not receive the check and the funds did not clear the bank until January 2007.

As a development professional soliciting gifts from individuals or corporations, you need to understand which organizations the IRS considers qualified organizations.

A gift made by credit card payment is complete when the charge is made, regardless of when the credit card bill is paid. The charge is considered made when processed by the recipient. So if a donor filled out a charge slip December 27, 2006, but the charity did not process the charge until January 3, 2007, the donor would be treated as making the gift in 2007 rather than 2006, as she intended.

A gift of securities or stock is made when the certificate is delivered or mailed to the charity with a transferring document, such as a signed stock power. If a stockbroker completes the transaction, the gift is considered made when the stocks are re-registered in the charity's name. Accordingly, if a charity receives a letter stating that the donor has transferred 50 shares of stock to a charity December 29 of one year, but the securities are not re-registered until February of the next year, the transfer did not actually occur until the second year.

The Recipient Organization

As a development professional soliciting gifts from individuals or corporations, you need to understand which organizations the IRS considers qualified organizations. If you work for an independent school, college, university, or other established nonprofit, you do not need to be concerned about proving your organization is qualified. However, if you have to address the deductibility of contributions to other, related organizations, such as independent auxiliaries, some of your charitable organization's programs, or payments under a matching gift program your organization operates. In such cases, it is important to understand which organizations the IRS considers qualified.

An individual or corporation may deduct contributions to organizations described in Internal Revenue Code Section 170(c). For practical purposes, most organizations described in Internal Revenue Code Section 501(c)(3) also qualify under Code Section 170(c). In

addition, institutions such as hospitals, universities, and churches generally qualify to receive tax-deductible, charitable contributions, even though they may not be 501(c)(3) organizations.[2]

However, other types of tax-exempt organizations are not recognized recipients of tax-deductible, charitable contributions. For example, the IRS does not allow deductions under Section 170(c) for contributions to social welfare organizations exempt under Section 501(c)(4), for contributions to business leagues exempt under Section 501(c)(6), or for contributions to social clubs exempt under Section 501(c)(7).

To be described in Section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes. No part of its net earnings may inure to the benefit of any private individual. No substantial part of its activities may carry on propaganda or otherwise attempt to influence legislation. The organization may not intervene or participate in any campaign on behalf of or in opposition to any candidate for public office. Every charitable organization described in Section 501(c)(3) is presumed to be a private foundation unless it establishes otherwise to the satisfaction of the IRS. Whether a 501(c)(3) organization is considered a public charity or a private foundation is important only if a private foundation is making the contribution. Individual and corporate donors may make tax-deductible, charitable contributions to either type of organization.

Donor-advised Funds

Generally established by a charity or investment firm, donor-advised funds are considered 501(c)(3) organizations. These funds are designed so that a donor may make a sizable gift to the fund in one year and then “advise” the fund on the future distribution of the money in smaller amounts. For the donor-advised fund to qualify as a 501(c)(3) organization, the donor must give up all control over the money contributed to the fund. The donor may not require that distributions be made to certain organizations in the future; the donor only may make suggestions. Practically

[2] *Hospitals, educational institutions, and churches may receive tax-deductible, charitable contributions under IRC § 170 without obtaining 501(c)(3) status if they meet the specific requirements of §170.*

speaking, however, the donor-advised fund almost always will honor the donor's suggestions.

The tax distinction between the fund and the individual is important to the donor.

Because the donor-advised fund is itself a charity, gift checks from a donor-advised fund will be signed by the fund, not by the individual who established the account. Accordingly, the gift receipt should go to the fund, not the individual (although you may wish to thank the individual for making the "suggestion"). The tax distinction between the fund and the individual is important to the donor.

Verification of Tax-Exempt Status

A donor may want verification that your organization is a qualified recipient. The most reliable way to verify tax status is to give the donor a copy of your organization's IRS determination letter. This letter states the type of 501(c) organization and whether it is a private foundation or a public charity. If this letter is more than five years old (as it often is), a donor also may request a signed statement that no material changes in your organization's tax status have occurred since the letter was issued.

If an organization cannot find its IRS determination letter, the organization may write to the IRS for confirmation or verification that it is a 501(c)(3) organization and get a copy of the IRS letter.

Be aware that hospitals and educational institutions may not have a determination letter from the IRS, since they are not required to apply for 501(c)(3) status. Accordingly, many donors do not require verification of the tax status of these types of organizations. If they do, a corporate officer may verify by signed statement that the organization is qualified to receive tax-deductible contributions under Internal Revenue Code Section 170(c).

The second most reliable way to demonstrate your organization's tax status is to confirm that it is listed in IRS Publication 78 (the renowned "Cumulative List"). The IRS updates this publication regularly and lists organizations to which gifts are tax-deductible. Between updates of the list, revocation of tax-exempt status is published weekly in the Internal Revenue Bulletin and listed at *www.irs.gov.* You may download IRS Publication 78 from the Web site or access the online, searchable database.

Filing and Recordkeeping Requirements

Questions regarding best practices, industry standards, or even government regulations pertaining to retention of constituent-related documents routinely surface at most nonprofit organizations. People struggle with the boundaries limited space imposes on information storage. At times the battle takes a personal turn, as people consider conservation of natural resources. Bottom line: Do we really need all that "stuff"? Which tidbits of data are truly critical to prospect cultivation and management aspects of our institutional advancement mission? How long should we keep those odds and ends of information we determine are important? Are there government regulations that mandate records retention policies? What do other institutions define as the most important pieces of constituent information to store?

Initial responses to a survey conducted at *SupportingAdvancement.com* in 2005 might lead one to believe that there are no definitive answers to questions about records management. Seventy-two percent of respondents indicated the existence of a records management policy at their institutions, with 21 percent saying their institution has no defined policy; 7 percent were uncertain. Even so, few patterns indicate trends that could be defined as industry standards or best practices to which any institution could be enticed to adhere.

Although some institutions have managed to take advantage of the options today's technology offers for maintaining electronic records, most rely heavily—if not completely—on hard copies of constituent information stored in paper files.

When developing a records management policy, advancement services professionals must consider what pieces of information to retain, in what order to organize the information, and how long to keep information that might still be relevant to current operations.

Roughly 70 percent of survey respondents said they regularly retained copies of matching gift forms, media clippings, and acknowledgment letters or receipts; 86 percent retained copies of other general correspondence. Almost 98 percent stated that they kept copies of pledge and gift agreements in the donor files.

Among the most controversial types of information retained are copies of donor checks. Almost 91 percent of respondents said they retained check copies. Many matching gift companies ask for copies of donor checks for match requests of $250 or more. There is a common misconception, however, that the IRS demands that charitable organizations retain copies of donor checks.

IRS publication 4221 contains the following statement related to types of information nonprofit organizations must retain:

Transactions such as contributions, purchases, sales, and payroll will generate supporting documents. These documents—grant applications and awards, sales slips, paid bills, invoices, receipts, deposit slips, and canceled checks—contain information to be recorded in accounting records. Keep these documents because they support the entries in books and the entries on tax and information returns. Keep them in an orderly fashion and in a safe place. For instance, organize them by year and type of receipt or expense.

The prevailing interpretation of the reference to canceled checks in this statement seems to be those issued by the nonprofit organization.

More than 70 percent of respondents refer to an historic institutional precedent having an impact on the amount of time records are retained. Some institutional staff responded to the effect that their organizations never get rid of constituent information. Most did narrow the time frame to a more specific period. More than half indicated information was stored on site for more than 10 years; roughly one-third stated that their organizations kept records on site for three to 10 years. The majority of institutions indicated no access to off-site record storage, but for those with such storage space the inclination was to keep information for more than 10 years.

Keeping records in a locked or restricted-access location is a best practice because of the institution's sense of accountability and also because of donor relations offices' concern to minimize the chance that unauthorized individuals might gain access to sensitive information. Slightly more than 72 percent of respondents kept constituent records in a locked or restricted area; roughly 25 percent indicated no restricted access. The rest were uncertain.

IRS publication 4221 discusses the amount of time charitable institutions must retain records:

Exempt organizations must keep records as long as they may be needed to administer provisions of the Internal Revenue Code. Generally, this means you must keep records that support an item of income or deduction on a return until the period of limitations for that return runs out. The period of limitations is the period of time in which an organization can amend its return to claim a credit or refund, or the IRS can assess additional tax. The most common limitations period is three years after the date the return is due or filed, whichever is later.

Often with limited resources to support conversion from paper files to electronic records management, many institutions are still relying on hard-copy records of constituent information. Twenty-one percent of respondents stated that the conversion from paper to electronic records management was already in progress. Of those planning a conversion, 16.3 percent were making such plans for the near future, and 55.8 percent said they would move to electronic records "somewhere down the road." Only 7 percent hold onto the idea of keeping only paper records both now and in the future.

The final question—how to dispose of records—sis an area of agreement: Shredding constituent information is the known practice of 83.7 percent of respondents, and 9.3 percent incinerate documents no longer needed; the remaining 7 percent are unsure.

Although no common standards have yet evolved for records management, the onus is on those supporting institutional advancement in the back offices to find the methods and means to organize constituent information. Because of increasing competition for donor dollars and the need for information to be available at the fundraiser's fingertips while on the road, there is an inexorable drive toward using technology to store constituent data in a manner easy to access and review. The best plan is to develop a policy for how your office manages every aspect of information about your constituents.

—Amy J. Phillips, Gift Registrar, Smithsonian Institution

The Receipt

It is all too easy to issue a thank-you letter that is beautifully worded yet fails to contain the "magic words" the IRS requires.

Over a decade ago, the IRS adopted requirements for documenting tax-deductible charitable contributions. These rules govern the type of documentation an individual or corporation must keep to substantiate a gift to a charitable organization. In fact, if an individual makes a charitable contribution of more than $250 to an organization, that person may not claim a tax deduction for the contribution unless she has the required receipt by the time she files the tax return.

It can be difficult to square IRS rules with your standard donor-recognition practices. It is all too easy to issue a thank-you letter that is beautifully worded yet fails to contain the "magic words" the IRS requires. While the donor may appreciate your eloquence, she is unlikely to make another gift if your oversight means she cannot deduct the charitable contribution.

So what should an individual or corporation use as documentation to prove that a gift is a deductible contribution? If a contribution is $250 or more, the individual or corporation is required to obtain a receipt with these three features:

- A statement that the charity received the contribution
- The amount of the contribution or a description of the property contributed
- A statement whether the donor received any goods or services in exchange for the contribution

Below is an example of language you may use to meet this requirement. You do not have to use these exact words, but each part must appear in your thank-you letter.

Sample Language for Acknowledging a Charitable Gift

Thank you for your contribution processed on *[date]* of *[amount of cash contribution or description of property. If this is a gift of property, do not value the property]*.

[Then insert one of the following statements:]

We estimate that the fair market value of the *[goods or services]* you have received from *[name of the organization that provided a benefit to the donor]* is $*[FMV]*. The amount of your contribution that is deductible as a charitable contribution for federal income-tax purposes is *$[deductible amount]* (the excess of the amount of your contribution over the value of the goods or services we provided to you).

[or]

As no goods or services were provided to you in return for your charitable contribution, the entire amount of your contribution is tax-deductible to the full extent otherwise allowed by law.

Under IRS rules, it is critical that the gift acknowledgment indicate whether the donor received goods or services in return for the gift. An individual authorized by the organization to issue tax receipts should sign the receipt. Donors must have the receipt by the time they file a tax return for the year the gift was made (including any extensions).

If your organization is lucky enough to receive contributions in excess of $10,000 in the form of cash, foreign currency, cashier's checks, money orders, bank drafts, or traveler's checks, you must file IRS Form 8300. This form requires you to report the amount and method of payment, to describe the transaction (an unrestricted charitable contribution or other type of transfer), and to verify the donor's identity. You may verify by examining a document normally accepted for identification, such as a driver's license, passport, or other official document. You must provide the donor with a copy of Form 8300 as filed with the IRS.

Vehicle Donations

New rules became effective January 1, 2005, regarding charitable donations of vehicles.[3] These rules limit the value of the charitable deduction a donor may take for a donated vehicle and place specific receipt requirements on a charity to substantiate the donation of a vehicle. The required content of the receipt depends on the charitable organization's intended use of the vehicle and are outlined in the instructions for new Form 198c. In general, if a charity sells the donated vehicle without "materially improving the vehicle" or putting it to a "significant intervening use," the receipt must include:

- Donor's name and taxpayer identification number
- Vehicle identification number
- Certification that the vehicle was sold in an arm's-length transaction between unrelated parties
- Gross amount received by the charity for the sale of the vehicle
- Statement that the deductible amount may not exceed the gross amount received by the organization for the sale of the vehicle

The nonprofit must give this acknowledgment to the donor no more than 30 days after the vehicle's date of sale.

If, instead, the organization retains the vehicle for its own use, it must give the receipt to the donor within 30 days of the date of the contribution of the vehicle, and it must include:

- Donor's name and taxpayer identification number
- Vehicle identification number
- Certification stating the intended use of the vehicle or any material improvement intended for the vehicle and the intended duration of such use
- Certification stating that the vehicle will not be transferred in exchange for money, property, or services before completion of the intended use or improvement

The IRS has issued extensive guidance on these new rules for vehicle donations, including what is considered a "material improvement" or a "significant intervening use." Consult these resources to determine

[3] These rules were created under the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004), and codified at IRC § 170 (f) (12) and 6720.

which receipt requirements apply and how to satisfy them. The receipt must be submitted to the IRS with the donor's tax return and filed with the IRS by the charity. Specific penalties are imposed on a charity that issues a false gift receipt for a vehicle donation or fails to furnish a gift receipt as the new law requires.

Disclosure

The IRS requires donors to obtain receipts that include the three elements listed above. In the interests of good donor relations, most nonprofits are careful to ensure that their receipts include all the required information.

However, under certain circumstances, the IRS imposes a burden to disclose on the charitable recipient. If a donor pays more than $75 to a charity, and the organization provides any goods or services to the donor in exchange for the gift, it must provide the donor with a written disclosure statement. It should state that the amount of the deductible contribution is limited to the excess of the amount contributed by the donor over the value of the goods or services the organization provided to the donor. Furthermore, the statement must include a good-faith estimate of the fair market value of the goods or services the donor received. The nonprofit is not required to value the donor's contribution.

Substantiation for Foundations

If you are a development officer for a nonprofit, you probably are soliciting gifts from private foundations. A foundation is not required to substantiate gifts to recipient organizations under the rules discussed above. Because a foundation does not pay income tax, it is not required to prove that its contributions are tax-deductible.

Instead, a different set of rules applies. A foundation must prove that any distribution is qualified for purposes of complying with the foundation tax rules. At minimum, the foundation will want to verify that the organization you represent is a 501(c)(3) organization and a public charity. A foundation may ask for a copy of your organization's determination letter from the IRS. In addition, for particularly large grants a foundation may require a signed copy of the grant letter and

program information about your organization, such as a copy of your latest budget, annual report, or most recent tax return.

Substantiation of Noncash Gifts

Increasingly, donors are willing to donate property, as opposed to making only cash gifts. Accordingly, it is important to understand how the IRS expects these gifts to be valued and reported. There is potential for abuse by donors who overvalue property to reduce the amount of tax they must pay to the government. To keep track of property donated to nonprofits, the IRS requires the donor, the tax-exempt organization, or both to submit a series of reporting forms. Following is a discussion of the two forms that can affect the charity receiving a noncash donation.

Increasingly, donors are willing to donate property, as opposed to making only cash gifts.

Form 8283

An individual or corporate donor must file Form 8283 if the amount of the donor's deduction for all noncash gifts made to charitable organizations is greater than $500. The primary function of Form 8283 is for the donor to set forth the value of the property for which the deduction is claimed and for the charitable organization to acknowledge receipt of the gift.

If your organization receives property for which the donor is claiming a charitable deduction in excess of $5,000, your organization's name, address, and employer identification number must be included on Form 8283. In addition, an authorized official of your organization must acknowledge the gift and state that it will file Form 8282 in the event the organization sells, exchanges, or otherwise disposes of the donated property within three years after the date your organization received the property. The person acknowledging the gift to the charity must be an official authorized to sign the organization's tax returns or a person specifically designated to sign Form 8283. Note that a person in the organization's development office is not likely to qualify as an authorized individual unless an officer or the board of directors has specifically designated that individual to sign.

By signing the donor's Form 8283, the 501(c)(3) organization is not indicating that it agrees with the claimed fair market value of the donated property. Therefore, simply signing the form should

not make your organization liable for overvaluing the property. The donor is required to furnish you with a copy of the signed Form 8283.

Form 8282

If your organization disposes of property for which it signed a Form 8283 within three years after receiving a contribution, you are required to file Form 8282 with the IRS. There are, however, two important exceptions in which Form 8282 does not need to be filed.

1. If the original recipient organization provided on its appraisal summary a statement that the appraised value of a donated item was not more than $500 at the time of the contribution; and
2. If the property the charitable organization received is consumed or distributed without consideration in fulfilling its charitable purpose or function.

In all other cases, Form 8282 must be filed within 125 days after the date your organization disposes of the property, and a copy of the form must be provided to the original donor.

The requirement to file Form 8282 applies to successor organizations if the property is transferred to another charitable organization. If you fail to file Form 8282, fail to include all of the required information, or include incorrect information on the form, you may be subject to IRS penalties.