



WRMarketplace

An AALU Washington Report

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TOPIC: Protecting Your Charitable Deduction – The IRS Issues Final Guidance.

MARKET TREND: The IRS has issued long awaited guidance concerning the proper reporting of cash and noncash charitable contributions. The final regulations, which became effective on July 30, 2018, reflect the enactment of provisions in the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. Failure to comply strictly with these requirements can result in a denial for some or all of a claimed deduction.

SYNOPSIS: To support and encourage charitable giving, the Internal Revenue Code (“Code”) provides an income tax deduction for contributions to qualified charities. After the Tax Cuts and Jobs Act of 2017 (“Tax Act”), this is one of the only substantial deductions left to wealthier taxpayers. However, the substantiation rules for claiming this income tax deduction are numerous and complex, especially for non-cash gifts. There are different requirements depending of the amount of the gift and the nature of the property contributed. The IRS closely scrutinizes a taxpayer’s compliance with each requirement and the law provides little margin for error. Absent full compliance, the IRS may deny the entire deduction and may even impose penalties. The following review is designed to help taxpayers and their advisors understand what is required when planning a charitable gift.

TAKE-AWAYS: Many higher net worth taxpayers participate annually in charitable giving to one degree or another. With final guidance, it is now clear what steps taxpayers and their advisors need to take to support and properly document a charitable gift.

PRIOR REPORTS: 2015-44; 2017-31

MAJOR REFERENCE: T.D. 9836, July 27, 2018

Over the summer, the IRS issued final regulations regarding substantiation rules for charitable income tax deductions. These final regulations confirm many of the existing rules from the proposed regulations, with certain clarifications. This WRMarketplace summarizes and updates some key substantiation rules for a donor's charitable income tax deduction based on the final guidance.

WHY IT MATTERS

With the \$10,000 cap on the individual income tax deduction for state and local taxes and the elimination of most miscellaneous itemized deductions, the charitable income tax deduction remains one of the few substantial deductions available to individuals post-tax reform. In that regard, the Tax Act also repealed the "Pease" limitation on itemized deductions, which can be most helpful for higher-income earners who wish to make larger charitable contributions.

Yet claiming the charitable income tax deduction, particularly for large, noncash contributions, requires compliance with the numerous, detailed rules now confirmed by the final regulations. The IRS often strictly enforces these rules, with potentially draconian consequences for failure to comply, including complete denial of the deduction. Accordingly, an understanding of the requirements is crucial to ensuring the intended tax treatment for charitable contributions.

WHAT THE FINAL REGULATION DOES

Despite numerous comments, the IRS essentially adopted its earlier proposed regulations as final, with a few notable changes and clarifications:

- A blank pledge card eventually completed by the donor will not serve as an adequate contemporaneous written record of a charitable contribution for deduction purposes.
- To the extent a taxpayer has a charitable contribution carryforward, the substantiation rules apply for the year of the gift as well as to all future years in which a deduction is claimed for the gift.
- A grace period is provided so that the verifiable educational and experience requirements for qualified appraisers will apply only to contributions made on or

after January 1, 2019. Qualified appraisers also can now satisfy their verifiable education requirement by successfully completing an appropriate course of study provided by a professional trade organization.

WHAT NOW

Check Charity's Status Before Making a Gift. A charitable income tax deduction is allowed only for gifts made to or for the benefit of "qualifying" charitable organizations, which generally are limited to U.S. organizations operated exclusively for various religious, charitable, scientific, literary, or educational purposes, or to prevent cruelty to children or animals, or to foster national or international amateur sports competition. The IRS maintains a searchable database – Exempt Organizations Select Check¹ – which includes data on which a taxpayer can rely in determining the deductibility of their contributions. Donors should check a charity's qualified status before making the gift and, if there is any doubt, request written confirmation from the charity with regard to its status.

Ensure Contemporaneous Written Acknowledgment Meets All Requirements. Claims for charitable income tax deductions for charitable contributions of \$250 or more require a contemporaneous written acknowledgment ("CWA") from the charity. The CWA must include the amount of cash and a description (but not value) of any property other than cash contributed; (2) a statement of whether the charity provided any goods or services in exchange for such contribution, and (3) a description and good faith estimate of the value of any such goods or services or, if they consist solely of intangible religious benefits, a statement to that effect.² Strict compliance is generally required when it comes to CWAs—substantial compliance is not enough.³

Note that the following will not meet all the requirements of a CWA for purposes of substantiating such charitable income tax deductions:

- Mere retention of a cancelled check
- A blank pledge card provided by the charity and eventually completed by the donor
- A fully-completed and filed IRS Form 8283 "Noncash Charitable Contributions," even when the recipient charity completes the acknowledgment required in Section B of the form

Don't Overlook "Quid Pro Quo." Donors may receive goods or services in exchange for their charitable contributions (for example, the dinner provided at a fundraising event). However, a donor's charitable income tax deduction for such a "quid pro quo contribution" normally is limited to the excess of the value of the gift over the value of goods/services received.⁴ If the total amount paid to the charity exceeds \$75, the charity must provide the donor with a written disclosure stating the total payment and a good-faith estimate of the value of the goods or services provided by the charity to the donor.

Example. Beth pays \$1,000 to Charity X to attend its annual donor recognition dinner. Charity X provides Beth with a written confirmation of her payment, which estimates the value of the dinner at \$250. Beth's charitable income tax deduction will be limited to \$750 (\$1,000-\$250).

Token recognitions of small value from charities are exempt from these requirements and do not reduce the value of the charitable deduction.⁵

Example. Josh contributes \$50 to his local Public Broadcast Station and he gets a tote bag worth less than \$10.90. His entire \$50 gift is deductible.

A similar exception applies for "intangible religious benefits" received by a donor from a religious charity. Note, however, that the entire price for a raffle or lottery ticket is considered payment in full for goods or services and is, therefore, not deductible at all.⁶

Confirm Appraiser's Qualifications. For non-cash donations (other than publicly-traded securities) valued over \$5,000, a taxpayer must: (i) obtain a "qualified appraisal"⁷ and (ii) attach an "appraisal summary"⁸ (and the actual appraisal for gifts of art over \$20,000 and other gifts over \$500,000) to the income tax return claiming the deduction.⁹

A "qualified appraiser" must prepare the qualified appraisal. To qualify, the appraiser must have verifiable education and experience in valuing the type of property for which the appraisal is performed.¹⁰ General appraisal education and experience may not suffice, depending on the type of property and the customary practices in valuing such property.

Example: John wants to contribute a rare antique item to Museum, a qualified charity. As there are few professional courses offered in appraising this rare antique, it is customary in the appraisal field for general appraisers of antiques to appraise this item. Adam Appraiser has successfully completed professional-level coursework for, and has two years of experience in, valuing antique personal property generally, but not in valuing this particular type of antique. Under the final regulations, Adam's education and experience would qualify for valuing the type of property identified (the antique lamp). If, however, the item John wanted to contribute was new, and not an antique, and it was not customary for professional antique appraisers to appraise such new items, Adam's experience in antique appraisals would not make him a qualified appraiser for this purpose.

Thus, careful selection of the appraiser is critical to ensuring proper substantiation of the charitable income tax deduction.¹¹ As the appraisal requirements generally kick in

only when larger charitable contributions are involved, loss of the deduction could be particularly costly to the taxpayer.

Remember to Substantiate Carryforwards. Substantiating a charitable contribution is not a “one and done” requirement if the contribution will be carried forward as a charitable income tax deduction in future years. The requirements for substantiation that must be submitted with an income tax return also apply to the return for any carryover year under section 170(d), including attaching a complete appraisal of the donated property if required under the initial return.

TAKE AWAYS

Many higher net worth taxpayers participate annually in charitable giving to one degree or another. With final guidance, it is now clear what steps taxpayers and their advisors need to take to support and properly document a charitable gift.

**QUICK REFERENCE CHECKLIST (UPDATED):
SUBSTANTIATING CHARITABLE INCOME TAX DEDUCTIONS**

✓	Confirm gift is made to or for the benefit of a qualifying charitable organization (QCO).
✓	Confirm taxpayer intends to make a charitable contribution (has donative intent).
✓	Obtain written disclosure from QCO of any goods or services provided to the taxpayer in exchange for a charitable contribution exceeding \$75.
✓	Obtain and retain a complete contemporaneous written acknowledgment (CWA) from the QCO for a charitable contribution exceeding \$250.
✓	Obtain a qualified appraisal from a qualified appraiser for any non-cash gift (other than publicly traded securities) valued in excess of \$5,000 (\$10,000 in the case of closely-held business interests).
✓	For gifts over \$5,000, attach a fully-completed “appraisal summary” (see IRS Form 8283) to the donor’s income tax return for the value of assets supported by a qualified appraisal. Retain the qualified appraisal at least until the expiration of the time for assessing a deficiency for the year in which the charitable deduction was claimed.
✓	For gifts of artwork with an expected value in excess of \$20,000 and for all other gifts over \$500,000, attach the full qualified appraisal to the income tax return claiming the charitable income tax deduction for the value of donated property supported by a qualified appraisal.

NOTES

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¹ See <https://www.irs.gov/charities-non-profits/exempt-organizations-select-check>

² See Code §170(f)(8) and Treas. Reg. §1.170A-13. For specific substantiation requirements and special rules for contributions of certain property, see Code §170(f)(12) *et. seq.* and underlying Treasury Regulations. The taxpayer must receive the CWA before the earlier of the filing his or her income tax return for the year of the contribution, or the due date for the return (including extensions).

³ See e.g., *15 West 17th Street LLC v. Commissioner*, 147 T.C. No. 19 (2016), and *Izen v. Commissioner*, 148 T.C. No. 5 (2017).

⁴ Treas. Reg. §1.170A-1(h)(2). See also Code §6115, defining a “quid pro quo contribution” as “a payment made partly as a contribution and partly in consideration for goods or services provided to the payor by the donee organization.”

⁵ IRS Pub. 1771.

⁶ Rev. Rul. 83-130, 1983-2 C.B. 148; *Goldman v. Commissioner*, 46 T.C. 136 (1966), *aff’d*, 338 F. 2d 476 (6th Cir. 1967).

⁷ See Treas. Reg. §1.170A-17. A qualified appraisal must be prepared (i) no earlier than 60 days before the contribution date and no later than the due date (with extensions) of the return first claiming the charitable income tax deduction, (ii) by a qualified appraiser (who also signs and dates the appraisal), (iii) under a fee arrangement where **no** part of the fee is based on a percentage of the appraised value, and (iv) with detailed information described in over 11 identified areas.

⁸ See e.g., Treas. Reg. §1.170A-13(c)(4)(ii) for the appraisal summary requirements.

⁹ See Code §§170(f)(11)(C), (D), and (E); Treas. Regs. §1.170A-13(c), IRS Pub. 561, and Notice 2006-96 for full requirements.

¹⁰ As noted, the final regulations provided that these requirements apply for charitable contributions made on or after January 1, 2019.

¹¹ See e.g., *RERI Holdings, LLC I v. Commissioner*, 149 T.C. 1 (July 3, 2017), although there also are cases where the Tax Court has found that substantial compliance with the appraisal requirements will suffice (see e.g., *Friedberg v. Commissioner* (T.C. Memo 2013-224) and *Scheidelman v. Commissioner* (T.C. Memo 2013-18)).