

## Tax Court: No Mercy For Donors with Inadequate Receipts

As most people are aware, the tax laws require donors to maintain documentation to substantiate their charitable contribution deductions. If audited, donors must be able to provide the IRS with qualifying receipts of certain contributions or risk the disallowance of their claimed deductions. A recent ruling by the U.S. Tax Court, *Durden v. Commissioner of Internal Revenue*,<sup>1</sup> demonstrates the dangers to donors and charities of not complying with the strict content requirements for charitable contribution acknowledgements.

David and Veronda Durden had contributed \$25,171 in 2007 to the Nevertheless Community Church and received a written acknowledgement of their contributions. Unfortunately, their receipt failed to state that the Durdens had not received any goods or services in exchange for their contributions. After the IRS disallowed the Durdens' deduction for insufficient acknowledgement, the Durdens obtained and provided to the IRS a second acknowledgement from their church, this time indicating that the Durdens received no goods or services in return for their 2007 contributions. The IRS rejected that second acknowledgement as well for not meeting the "contemporaneous" requirement. The Durdens sought relief from the Tax Court, but the Tax Court concluded that the Durdens had "failed strictly or substantially to comply with the clear substantiation requirements of section 170(f)(8), and their deduction for the charitable contributions in issue for 2007 must be disallowed." On May 17, 2012, the Tax Court therefore affirmed the IRS's disallowance of the deduction.

### Contribution Substantiation Requirements

This ruling serves as a reminder to all churches and charities of the need to properly receipt donations over \$250. Donors may not rely on a canceled check to substantiate such charitable contributions. Internal Revenue Code (IRC) § 170(f)(8) requires donors to obtain a "contemporaneous written acknowledgment" of their contribution from the recipient charity. A donor must receive this qualifying acknowledgment *before* (1) he or she files the tax return reporting the gift, or (2) the due date for the return (including extensions), whichever comes first. As the Durdens and Nevertheless Community Church learned the hard way, the IRS may disallow the deduction if these requirements are not met.

The IRC does not prescribe a specific format for the written acknowledgment that donors must obtain to substantiate their contributions. However, the acknowledgment must include:

- the donor's name;
- the amount of cash, or a description of the property contributed.<sup>2</sup> If one receipt is used to acknowledge two or more contributions, the contributions must be separately itemized;
- a statement explaining whether the charity provided any goods or services in consideration, in whole or in part, for the gift. If no goods or services were provided, this fact must be stated; and
- a description and good faith estimate of the value of any goods or services provided in consideration for the gift. If the only benefit the donor received was an "intangible religious benefit," this must also be stated. However, goods or services provided by the donee organization that are of "insubstantial value" need not be taken into account for the purposes of the acknowledgment requirements.

<sup>1</sup> T.C. Memo. 2012-140.

<sup>2</sup> The property description should not include a valuation of the property. The donor, not the charity, is responsible for valuing donated property.

The IRC also contains different or additional rules to substantiate donations that are: (1) \$250 or under, (2) made through a payroll deduction plan, or (3) deductible expenses for volunteer services rendered to a church or charity.

### “Quid Pro Quo” Disclosure Requirements

If in exchange for a contribution, a donor has received value that exceeds limits of “insubstantial value” (as defined annually by the IRS), then the donor is considered to have given a *quid pro quo* contribution. A *quid pro quo* contribution is a payment made partly as a contribution and partly for goods or services provided to the donor by the charity. In such cases, the IRC allows a donor to deduct only the amount of the contribution that is above and beyond what the goods or services are worth.

IRC §6115 requires the donee organization to provide a written disclosure statement to donors whose *quid pro quo* contributions exceed \$75. The disclosure statement must:

- be in writing and made in a manner reasonably likely to attract the donor's attention;
- inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor *over* the value of goods or services provided by the charity; and
- provide the donor with a good-faith estimate of the value of the goods or services that the donor received in exchange for his/her contribution.

Note that the *quid pro quo* disclosure requirement is separate from the written acknowledgment requirement discussed above. However, a charity can issue one document containing both acknowledgements.

**If you would like to speak with a Gammon & Grange attorney about your charity’s compliance with IRS receiving and receipting requirements, contact [Steve King](#) or [Steve Kao](#) at (703) 761-5000.**

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