GIVING GUIDE

TAX DEDUCTIONS

Document your charitable giving

BY CRAIG MALMGREN

Can you lose your charitable deduction by not having the proper documentation?

The answer is a firm yes.

Recently, there have been several Tax Court cases where taxpayers did, indeed, lose charitable deductions for failure to meet all of the doc requirements.

First, a review of the requirements:

Donors must obtain written acknowledgment from the charity if the value of a single contribution (in cash or other property) is $250 or more – a canceled check or other reliable records is not sufficient proof.

The written acknowledgement must include the following:

- ► The legal name of the charitable organization.
- ► Confirmation of the organization's 501(c)(3) status and its Federal ID number.
- ► The name of the donor.
- ► The date or dates of the contribution.
- ► A description of the cash or non-cash contribution (but not the value of a noncash donation).
- ► The amount of a cash contribution.
- ► A description and a good faith estimate of the value of any goods or services received by the donor in return for the contribution, or a statement that nothing of value was received by the donor.

The requirements for single donations of less than $250 are less stringent. Only a bank record of the contribution (cancelled check, bank statement, or credit card record) or a written acknowledgement from the charity containing its name, the date of the contribution, and the amount, is needed.

With these limits in mind, note the following:

- ► Cash placed in the collection plate at church, or in a Salvation Army kettle, would not be deductible unless a written acknowledgement with the above details is received from the charity.
- ► Multiple gifts of less than $250 to the same charity, totaling more than $250 for the year, must only meet the lower documentation requirements.

Example:

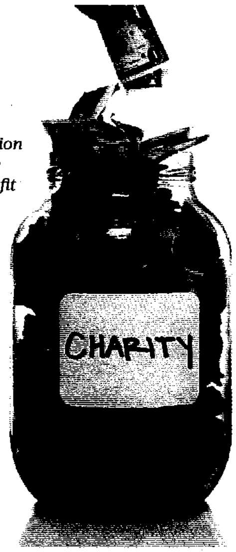
Mary Smith donates $100 per week to her church using separate checks. She only needs her cancelled checks to support her deduction, as each gift is considered separately. The more stringent documentation requirements would not apply even though her yearly contributions totaled $5,200.

Rulings against taxpayers

In the 2012 Tax Court case of David Durden, the taxpayers contributed nearly $25,000 to their church. Each check exceeded $250. The church's written acknowledgement for the donations did not include the required statement that "no goods or services were given in exchange for the donations." Although the taxpayers met all of the requirements but for the incomplete acknowledgement letter, the charity deduction was lost because of the missing statement.

In the 2015 Tax Court case of Kenneth Kunkel, the taxpayers deducted non-cash contributions of $37,000, including $24,200 of clothing and household goods, to their church's annual flea market. They did not receive any written acknowledgement from the church for these donations. The taxpayers argued that the more stringent rules did not apply because they made 97 separate donations (a convenient average of $249 each) and, therefore, each contribution was less than $250. The Court did not agree to this argument, as the items were donated to the church for a single event. The Court also noted that the value of the donations was not determined until the time the taxpayers prepared their tax return in the following year. The Court held that there was no way to determine after the fact whether each separate donation was below or above $250 in value. The deduction was, therefore, disallowed in full.

It is up to taxpayers to obtain the proper documentation to maximize the tax benefit of their charitable giving.



In still another 2015 Tax Court case, Marie Beaubrun, the taxpayer donated almost $10,000 to her church using multiple checks in various amounts. Each check exceeded $250. She did not receive the proper acknowledgement from the church at the time of the contributions. She obtained a letter with the proper wording from the church four years later (probably after the IRS audit started). The law requires that the letter must be in your possession prior to filing your tax return; so she, too, lost the tax deduction.

Those non-cash contributions

Required documentation can also be an issue for large non-cash contributions. For non-cash gifts in excess of $5,000 value (excluding publicly traded securities), a qualified appraisal of the donated property must be obtained, and a copy of the appraisal must be attached to the original tax return along with a signed declaration from the appraiser of his or her qualifications.

In the recent Tax Court case of David Gemperle, the taxpayers lost a $108,000 non-cash contribution deduction because they failed to attach a copy of the appraisal to their tax return, even though the appraisal was prepared. It did not matter that the taxpayers subsequently filed an amended tax return attaching the appraisal copy.

In an earlier case, Newton Friedman, the taxpayers deducted $217,000 for equipment donated to a university and attached a copy of an appraisal to their original return. The Court, however, found that the appraisal lacked the information required under IRS regulations. In addition, as in the other cases, the acknowledgement from the university failed to include the "no goods and services received" statement. No deduction was allowed.

A common theme in most of the above cases is that the taxpayers were tripped up by well-intentioned donations to their own churches. Many community religious organizations and other local charities rely on volunteer members to handle the accounting of donations, who may not be familiar with the IRS acknowledgement rules. When giving locally, in particular, be sure to check your acknowledgement letter carefully to ensure that it includes all of the required information.

Recommendations

- ► Avoid cash contributions unless they can be documented by the charity.
- ► Do not file your tax return until all contributions in excess of $250 have been properly documented and the documentation is in your possession. If necessary, consider filing an extension to file your return if the required letter from a charity is missing. Follow-up with charities who are late in mailing out their donation letters; you may have been inadvertently missed.
- ► Review all charity letters to make sure all required information is included.
- ► Don't play the audit lottery and lose. Obtaining an acknowledgment from the charity at a later date will not save the tax deduction.
- ► For large donations to a private foundation, the foundation officer should still issue a proper written acknowledgement to the donor, even if the foundation officer and the donor are one and the same person.

The big takeaway

While the primary acknowledgement requirements for charitable donations rest with the charitable organization itself, it is up to taxpayers to obtain the proper documentation to maximize the tax benefit of their charitable giving.

Charities rely more and more on donations from the general public. If they want repeat donors, they must be responsive and provide the documentation required by the IRS to their donors in a timely manner.

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