

Charitable-Deduction Substantiation: A Reminder and a Reprieve

12.28.23 | Linda J. Rosenthal, JD



It's just four days until 123123: The close of yet another year with some troubling data about charitable giving. There are fewer individual donors.

Among the latest confirming data are the preliminary [results of Giving Tuesday](#) held on November 28, 2023, and announced by the next day. That wildly successful annual event, launched in 2012, is now generally viewed as the “kick off” of the “giving season.” While the total amount of money donated held up from 2022, and some 34 million adults in the United States “participated in some way,” that was a [10% drop from 2022, “mirroring trends in the nonprofit sector over the past year....”](#)

This concerning news has made the December scramble for each and every potential charitable contribution – including stragglers coming in at the last minute – all the more urgent.

[Once again](#), we offer an important reminder. There is one critical task in properly wrapping up any donation of \$250 or more: a [“contemporaneous written acknowledgment”](#) in a precise format. While it's the [duty of the donor](#) to request and obtain this proof, many of an organization's supporters will have no notion that any such requirement exists, and it's incumbent on the donee-charity to make sure it is written properly with the correct magic words, and that it's received by the donor in enough time ahead of a designated deadline.

“In federal tax law, sometimes forgetting to dot an ‘i’ or cross a ‘t’ isn't a fatal error,” we wrote in [Charitable Deduction Rules: Beware “Sharp Corners” \(August 29, 2022\)](#). “But, for the substantiation of charitable deductions, ‘almost good enough’ is not enough.”

The Rules

“Over the years,” we explained in [one of our earliest blog posts](#), “there have been some abuses with charitable tax deductions. People didn’t actually give what they said they gave, or they donated property they said was worth much more than it was actually worth. So Congress has acted. Repeatedly.”

Lawmakers “[imposed duties](#) on the donors as well as on the tax-exempt, section 501(c)(3), recipients to prove that deductions were actually made in the amounts claimed. It was [tough stuff](#). And, according to powers authorized under law to interpret and enforce statutes, the IRS issued some [equally tough rules](#).”

There are special rules for substantiating donations of \$250 or more. See IRS [Publication 1771 – Charitable Contributions: Substantiation and Disclosure Requirements](#) (Rev. 11-2023) 9 pp. PDF. “Donors are responsible for obtaining a contemporaneous written acknowledgment from a charitable organization for any single monetary contribution or noncash contribution valued at \$250 or more before donors can claim a charitable deduction on their federal income tax returns.”

See also [Charitable Organizations – Substantiation and Disclosure Requirements](#) on the IRS website: “A donor can deduct a charitable contribution of \$250 or more only if the donor has a [written acknowledgment](#) from the charitable organization.... The [donor is responsible for requesting and obtaining](#) the written acknowledgement from the donee.”

And – of critical importance – the “donor must get the acknowledgement by **the earlier of**: (1) The date the donor files the original return for the year the contribution is made, or (2) The due date, including extensions, for filing the return” [bolding in original].

Mandatory Content: Written Acknowledgment

More particularly, at [Charitable contributions: Written acknowledgments](#), tax agency officials explain: “The written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information:

- name of the organization;
- amount of cash contribution;
- description (but not value) of non-cash contribution;
- statement that no goods or services were provided by the organization, if that is the case;
- description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution; and
- statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.”

The governing statute for charitable deductions [I.R.C. [170\(f\)\(8\)\(A\)-\(C\)](#)] and the corresponding regulations [[26 C.F.R. 1.170A-13\(f\)](#)] are excruciatingly long and complex, but this particular rule within that mass of legalese is short and sweet.

“It is [not exactly rocket science](#),” wrote accounting guru Peter J. Reilly in *Forbes Magazine* in an article published on Christmas Eve 2016 at 6:33 pm EST. The urgency was due to a [U.S. Tax Court decision handed down](#) just two days before, in which Petitioner 15 West 17th Street LLC received “...

very bad news about the strictness of the “... written acknowledgement” rule. That rule, explained Mr. Reilly, is “... [v]ery, very strict. The donee organization, the [Trust for Architectural Easements](#) went to great lengths to make up for neglecting to include the no goods and services language in its acknowledgement letter to no avail. The claimed (and lost) contribution for an architectural easement was \$64,490,000. Ouch !”

For donors, he added: “‘Contemporaneous’ means that you have to have the written acknowledgement in your hot little hand at the earlier of the filing of your return or its due date including extensions.”

And that, of course, is the reprieve all around for both donors and donees: It’s *only the donation* that has to be completed by New Year’s Eve.

“Almost Good Enough” Doesn’t Work

In several blog posts over the years, we’ve fleshed out these requirements for charitable-deduction substantiation, including examples of how and why “almost good enough” or “substantial compliance” arguments fail. See:

- [*We Received Your Generous Donation. Nevertheless...*](#), (June 6, 2014)
- [*Charitable Deductions of \\$250 or More: Know the Rules*](#) (February 15, 2017) [including the case discussed by Peter Reilly, CPA]
- [*Charitable Deduction Substantiation: Redux*](#) (October 19, 2017) [Another case in mid-summer 2017: “Don’t pretend you ‘forgot’ to follow a step, when you’re actually trying to hide some monkey business. IRS officials and Tax Court judges did not just fall off turnip trucks.”]
- [*Charitable Deduction Rules: Beware “Sharp Corners”*](#) (August 29, 2022) [two more court decisions]
- [*Year-End Fundraising: A Few Random Reminders*](#) (November 30, 2022)

Conclusion

These are “.. [cautionary tales](#) for everyone out there who wants to take a \$65-million charitable deduction. Or a \$250 deduction. Or whatever.

It’s also a useful lesson for the 501(c)(3) organizations who want to keep their donors – large and small – happy, and coming back year after year. When there’s a straightforward “hoop” to jump through to make sure that your donors have the right paperwork to substantiate their charitable deductions of \$250 and more to the IRS, just do it. Do it within the generous time frame allowed; not a day late. And make sure you parrot the required magic language – exactly.

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