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IRS ISSUES

Charitable Deductions of $250 or More: Know the Rules

02.15.17 | Linda J. Rosenthal, JD

This is a cautionary tale 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. It's that time of year when donors will want to have the proper documentation in hand for their 2016 tax returns.

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. Make sure you parrot the required magic language – exactly.

"*Contemporaneous Written Acknowledgment*"

Forbes' Magazine's Peter J. Reilly has this to say about the acknowledgment for a charitable deduction of $250 or more: *"It is not exactly rocket science."*

A caveat to this "straightforward 'hoop": The statute [I.R.C. 170(f)(8)(A)-(C)], and regulations [26 C.F.R. 1.170A-13(f)] are excruciating long and complex, but this particular rule within that mass of legalese is short and sweet, and is explained simply in places like Publication 1771 "Charitable Contributions: Substantiation and Disclosure Requirements " and on the IRS website, "Substantiating Charitable Deductions."

Here's the rule: For contributions of $250 or more there must be a "contemporaneous written acknowledgement" that includes:

- (i) The amount of cash and a description (but not value) of any property other than cash contributed
- (ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i) and
- (iii) A description and good faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

"Contemporaneous," Reilly explains in a Christmas Eve article, "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."

The reason that Reilly wrote that urgent December 24th article is that just two days earlier – on December 22, 2016 – the United States Tax Court issued a well-publicized ruling squarely on point.

That Tax Court opinion no doubt dashed the holiday cheer for the petitioners in *15 West 17th Street LLC, Isaac Mishan, Tax Matters Partner v. Commissioner*, 147 T.C. 19 (Dec. 22, 2016) ["15 W. 17th St."] They, and their high-powered lawyers, and the Trust for Architectural Easements, and their legal team, all dropped the ball on this pesky substantiation requirement, and – poof! – a $65-million deduction was disallowed.

That $65-million figure may have been a bit wobbly; the Tax Court judges joining in the majority opinion appear to have had some reservations about the validity of that appraisal. None of that mattered, though, because all of these heavy hitters failed at the simple task of timely generating the contemporaneous written acknowledgment with the 3-part magic language.

Routine Substantiation Case

Over two years ago, in *We Received Your Generous Donation. Nevertheless…,* (June 14, 2014), we explained this donation-substantiation rule in connection with David and Veronda Durden, faithful members of the flock at Nevertheless Community Church in Pflugerville,Texas.

The Durdens contributed over $22,000 to the congregation in 2007. While Church officials happily provided the Durdens with a letter to support the charitable deductions on their tax return for that year, the Church's letter did not include all of the required magic language.

The IRS disallowed the entire deduction – amounting to over $7,000. The Durdens appealed to the United States Tax Court and, in *Durden v. Commissioner of Internal Revenue,* the trial judge, in a 2012 routine "memorandum" decision. affirmed the IRS disallowance of the entire $7,000.

The Recent Case

In the *15 W. 17th St*. case, a development group bought a piece of real estate in Manhattan with the intention of constructing expensive office condos.

The building, though, had historic value, and some Greenwich Village busybody butted in and started the process to have it named an historic landmark. Seeing their cash cow disappearing, the developers arranged to donate a historic preservation deed of easement to the Trust for

Architectural Easements, a 501(c)(3) "qualified organization."

The LLC's contribution of the easement to the Trust was completed for federal tax purposes in 2007. On May 14, 2008, the Trust sent the LLC a letter acknowledging receipt of the easement. This letter did not state whether the Trust had provided any goods or services to the LLC, or whether the Trust had otherwise given the LLC anything of value, in exchange for the easement.

Oops!

Long story short: A few years after this colossal mistake, the lawyers decided to try a highly creative and untested move and argument to salvage the $65-million claimed deduction. In the eventual 68-page opinion, nine Tax Court judges joining the majority opinion explained that this "Hail Mary" move failed.

In a nutshell, the taxpayers argued that the statute had an alternative procedure to substantiate a charitable donation of $250 or more; this alternative is contained in Section D instead of Section A. In excruciating detail, the judges went through every bit of the legislative history of the statute to satisfy the opinion reader that this purported alternative won't fly. The reason: Section D is expressly conditioned on regulations being issued, but no such regulations have been issued after the passage of a number of years – and that's that.

All of this is a big deal for tax law wonks, but presumably of little interest to 99.5% of our readers, so we'll leave it that.

Conclusion

The bottom line remains the same now as it was on December 21, 2016: Any 501(c)(3) receiving donations of $250 or more must issue the required "contemporaneous written acknowledgment" on time and with the exact magic language.

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