

Gift Substantiation Final Regulations: At Last!

02.21.19 | Linda J. Rosenthal, JD



It's taken an excruciatingly long time: almost 10 years.

Treasury Regulations first proposed in 2008 are now approved and final as of July 30, 2018. They are published under the title "Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions," designated as Treasury Regulation Sections 1.170A-15 (cash), -16 (noncash), -17 (qualified appraisals and appraisers), and -18 (clothing and household items). (Full text [here](#))

Is this about some obscure, "deep-in-the-weeds" statute in the Internal Revenue Code that few people know about or understand?

No. It isn't.

The topic is front-and-center in the law of tax-exempt organizations and affects the many Americans who regularly make charitable contributions and claim tax deductions for their generosity.

From time to time, Congress amends the law authorizing tax deductions for charitable donations. These changes sometimes include the requirements to substantiate certain contributions, particularly cash over a certain amount and other non-cash contributions.

There were changes in the authorizing statute – Section 170 of the Internal Revenue Code – in the 2004 American Jobs Creation Act and then again in the 2006 Pension Protection Act. Since statutes are (comparatively speaking) brief and worded broadly, an administrative agency with authority to carry out the law is authorized to prepare and propose draft regulations, publish them for public discussion and comment, and then timely issue final regulations.



For a variety of reasons, that process broke down – spectacularly – in this case. A ten-year lag between proposed regulations and the final version is ... not normal. “Despite taking ten years to finalize the regulations, Treasury made only minor changes from the proposed regulations, which many organizations were already following.” Treasury also organized them better; into sequential sections from their previously “scattered” locations.

Whatever. They’re here now; most are effective as of July 30, 2018, with the remaining ones operative in 2019. So let’s take a look.

What’s In the Final Regulations?

The charitable deduction statute is section 170 of the Internal Revenue Code titled “Charitable, etc. contributions and gifts.” Subsection (f)(8) is titled “Substantiation Requirements for Certain Contributions.” The Internal Revenue Service website has helpful explanations of the law, and the agency issues Publication 1771 titled Charitable Contributions: Substantiation and Disclosure Requirements (3/2016); presumably to be updated soon.

Many of the points highlighted in the final regulations deal with required appraisals and the credentials of any appraiser. For instance, they include: (i) more particulars about the education and experience of a “qualified appraiser”; and (ii) more types of donations that require an appraisal, and why previous forms of substantiation won’t suffice.

Other aspects of the final regulations include clarifications like:

- • A 501(c)(3) organization is permitted to use email to send donor receipts;
- • In the case of payroll deductions, a pay stub plus a pledge card from the donee organization will satisfy the substantiation requirement; and
- • When a donation is made to a first 501(c)(3) but is earmarked for distribution to a second 501(c)(3), it is the first organization that must provide the donor acknowledgment and receipt.

Conclusion

The most important point to keep in mind for the substantiation requirements in general – above and beyond the few items that were clarified most recently – is that the government requires strict compliance. Each “i” must be dotted; each “t” must be crossed.

For instance, when certain wording in a receipt is specified, it must be followed to the letter. There have been several high-profile – and high-dollar – court cases recently in which a tiny bit of sloppiness has cost millions of dollars in claimed tax deductions.