

We Received Your Generous Donation. Nevertheless, . . .

06.06.14 | Linda J. Rosenthal, JD



David and Veronda Durden were faithful members of the flock at Nevertheless Community Church in Texas. They contributed just over \$25,000 in 2007.

The Church happily provided the Durdens with a letter to support the charitable deductions on their 2007 tax return.

But the Church's letter didn't include all the language required by the federal tax statute and regulations.

So the Durdens lost the entire deduction – over \$7,000. See [Durden v. Commissioner of Internal Revenue](#) (2012) T.C. Memo 2012-140.

Oops.

Charitable Deduction Abuses

Over the years, 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. They 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 its legitimate authority to interpret and enforce statutes, the IRS issued some equally tough rules.

For donations of money in any amount, the taxpayer-donor has to provide proof. The Durdens had the necessary supporting documents – cancelled checks. No problem.

But for each individual donation of more than \$250, there is an additional requirement imposed on the 501(c)(3) organizations. The recipient has to provide a “contemporaneous written acknowledgment.”

In order to pass muster, the writing has to include each of these specific recitals:

- The amount of the contribution;
- Whether the organization provided any goods or services in exchange for the contributions

and

- If the organization provided any goods or services (like a meal at a fundraiser), a description and estimate of the value of the goods or services, or a statement that such goods or services consisted of only “intangible religious benefits”
- “Contemporaneous” means before (the earlier of) the date the taxpayer filed the tax return or the due date, including extension, for filing the original return for the year.

What Happened to the Durdens

Almost all of the Durdens’ periodic donations in 2007 were over \$250. Nevertheless Community Church wrote a letter in January 2008 acknowledging the donations.

But it forgot to include language that it did not provide any goods or services to the Durden in connection or exchange for the contributions.

When, in April 2009, the IRS questioned and denied this substantial tax deduction, the Church helped out by issuing a second letter with the necessary language. Unfortunately, this correction letter was written way past the “contemporaneous” time frame specified in the statute and regulations.

The IRS denied the entire deduction, and the Durdens took their case all the way to the United States Tax Court.

The Tax Court judge upheld the denial of the entire claimed deduction. Congress really meant what it wrote. And the regulations were entirely consistent with this rigid proof requirement. There was no exception for “substantial compliance.” The Judge’s hands were tied.

The harsh result in this 2012 case has been criticized in many quarters including by tax law professors. But that’s the way it is right now.

Conclusion

Section 501(c)(3) organizations have to know all of the rules relating to tax deductions, or they’re going to have some mighty angry donors.

And we haven’t forgotten to tell you about the complex rules on substantiation of donations of property. See upcoming posts.

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