

September 20, 2018

Charitable Contributions

New IRS Regulations Update Rules for Substantiation of Charitable Contributions

The Internal Revenue Service (the “IRS”) recently published final regulations regarding the requirements for substantiation of charitable contributions. The regulations, which implement amendments to the Internal Revenue Code of 1986 (the “Code”) enacted as part of the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006, were initially proposed in 2008. Charitable organizations should review their current contribution acknowledgment letters and practices in light of the finalized guidance.

Section 170 of the Code requires any taxpayer claiming an income tax deduction for a charitable contribution to verify having made such contribution in the manner provided by regulation. The particular substantiation required under the final regulations depends on the nature and value of the property contributed, but the regulations apply to all organizations that receive charitable contributions. The IRS requires strict compliance with the regulations and has denied claimed deductions for failure to observe the formal requirements. For example, in 2016, the Tax Court upheld the decision of the IRS to deny a claimed charitable deduction in excess of \$64 million on the basis that the contemporaneous written acknowledgment (one of the requirements described below) failed to state whether the donee had provided any goods or services to the donor in exchange for the contributed property.¹

The final regulations are effective from July 30, 2018, except as otherwise noted. The key provisions of the final regulations are as follows:

- **Substantiation requirements for contributions of cash.** Contributions made in the form of cash, check, or other monetary gift (such as a payroll deduction, credit card payment, online transfer or donation of a gift card redeemable for cash) must be substantiated as follows:
 - *Contributions up to \$250* may be substantiated by (i) an official bank record² reflecting the transfer or (ii) a written communication from the donee (including an email) showing the donee’s name, the date of the contribution, and the amount of the contribution (a “written

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- communication”). For a contribution by payroll deduction, a pay stub or other employer-furnished document reflecting the amount withheld and transferred to the donee satisfies the requirement of a written communication. The preamble to the final regulations clarifies that a blank pledge card provided by the donee and completed by the donor does not satisfy the requirement.
- In addition to a bank record or written communication, *contributions of \$250 or more* must also be substantiated by a contemporaneous written acknowledgment from the donee that includes (i) the amount of the contribution and (ii) a description and good faith estimate of the value of any goods or services provided by the donee organization in consideration of the contribution (a “contemporaneous written acknowledgment”).
 - The contemporaneous written acknowledgment may be incorporated into the donee’s written communication, or the donee may provide two separate statements. A donee that elects to use a single document should confirm that its form of acknowledgment letter includes the date of the contribution, as that is now a requirement under the regulations.
 - Any required substantiation must be received by the donor by the due date for filing the donor’s original return for the taxable year in which the contribution was made, including any extension, or by the date on which the donor actually files such return, if earlier.
 - Transfers to a charitable lead trust or a charitable remainder trust are excepted from the requirement of a bank record or written communication, but must be substantiated by a contemporaneous written acknowledgment.
 - **Contributions of noncash property.** Contributions of any other property must be substantiated as follows:
 - *Contributions of property up to \$250 in value* generally must be substantiated by a receipt from the donee showing the donee’s name and address, the date of the contribution, and a description of the property that would permit a person who is not generally familiar with the type of property contributed to identify the contributed property. The degree of detail required for such identification depends on the circumstances of the contribution, including the value of the property. A receipt for a gift of securities must include the name of the issuer, the type of security and whether the securities are publicly traded.
 - *Contributions of property above \$250 in value* must be substantiated by a contemporaneous written acknowledgment that describes the property contributed.
 - For *contributions of property from \$500 to \$5,000 in value*, the donor must complete Section A of Form 8283, Noncash Charitable Contributions, describing the property contributed and providing certain additional details, including fair market value. Form 8283 is a requirement in addition to, not a substitution for, a contemporaneous written acknowledgment. Form 8283 is attached to the donor’s income tax return on which the deduction is claimed.
 - For *contributions of property above \$5,000 in value* (other than property specifically excepted, such as publicly traded securities), the donor must obtain a qualified appraisal, as described below, and complete Section B of Form 8283, providing additional information about the property and the appraisal, including fair market value.
 - Section B must be signed by the donor, the appraiser and the donee. By signing, the donee certifies only that it received the property described, not the claimed value.
 - The final regulations add a provision, not included in the proposed regulations, that permits the donor to obtain multiple appraisals for the donated property and to select which appraisal to use for purposes of substantiation.
 - For *contributions of property above \$500,000 in value*, the donor must also attach a copy of the qualified appraisal to the donor’s return.

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- If a charitable contribution deduction claimed in respect of noncash property of \$500 or more in value is carried over to subsequent tax years, a copy of the Form 8283 for the contribution (and a copy of the qualified appraisal, where required) must be attached to the donor's return for each subsequent year in which the deduction is claimed.
- In determining whether a contribution exceeds a value threshold, the donor must aggregate all contributions of similar items of property to the same donee in a given tax year.
- The final regulations exclude a provision from the proposed regulations that set forth standards by which a donor could establish reasonable cause for failure to properly substantiate a gift of noncash property. The deletion reflects a 2013 decision of the Tax Court³ that held that reasonable cause in such cases is determined through a fact-intensive inquiry rather than by application of a fixed standard.

The final regulations also provide guidance on qualified appraisals, the criteria for which are as follows:

- **Qualified appraiser.** The appraisal must be prepared by a qualified appraiser, defined as an individual with “verifiable education and experience” in appraising property of the type contributed.
 - An appraiser is deemed to possess the requisite education and experience if he or she (i) has successfully completed professional or college-level coursework in valuing the type of property in question and has two or more years of professional experience or (ii) has earned a “recognized appraiser designation” awarded by a professional appraiser organization.
 - The final regulations omit a list of professional appraiser organizations deemed to award recognized appraiser designations that appeared in the proposed regulations. The preamble to the final regulations states that the change is meant to clarify that the list did not indicate a preference for those organizations.
- **Generally accepted appraisal standards.** The appraisal must be completed in accordance with generally accepted appraisal standards, defined as “the substance and principles of the Uniform Standards of Professional Appraisal Practice [USPAP], as developed by the Appraisal Standards Board of the Appraisal Foundation.” The preamble to the final regulations notes that the reference to “substance and principles” of USPAP is intended to reflect the acceptability of comparable appraisal standards that are also generally accepted in the appraisal industry.
- **Other requirements.** The appraisal must also satisfy certain additional requirements pertaining to its contents, timing and effective date and the circumstances under which the appraisal was prepared.
- **Effective date.** The regulations affecting qualified appraisals are effective for contributions made on or after January 1, 2019.

The regulations specify that a partnership or S corporation that makes a charitable contribution is treated as the donor for purposes of obtaining appropriate substantiation. Where the partnership or S corporation is required to complete Form 8283, the partnership or S corporation must provide a copy to every partner or shareholder who is allocated a charitable contribution deduction by the entity. Each partner or shareholder must attach a copy of the form to the income tax return claiming the deduction.

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ENDNOTES

- ¹ *15 West 17th Street LLC v. Commissioner of Internal Revenue*, 147 T.C. 557 (2016).
- ² A “bank record” is defined to include a statement from a financial institution, an electronic fund transfer receipt, a canceled check, a scanned image of both sides of a canceled check obtained from a bank website or a credit card statement.
- ³ *Crimi v. C.I.R.*, T.C. Memo. 2013-51.

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