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Nonprofit Newsletter Fall 2016 - Easy Mistakes - Denials of Charitable Contribution Deductions for Lack of Substantiation Letters and Complete Appraisals

Many donors appreciate "thank-you" notes from charities as a polite gesture and do not realize they can be a key to a deduction. To claim an income tax deduction for a charitable contribution of $250 or more, a taxpayer must have a written acknowledgement of the contribution from the charity before filing his or her return. Under Section 170(f)(8) of the Internal Revenue Code, the acknowledgement must include the amount contributed (or a description of the contribution) and a statement of whether any goods or services were provided in exchange for the contribution. Even though you don't have to file the written acknowledgment – often sent in the form of a thank-you note – with your return, if you can't produce it on audit, your deduction can be denied. The denials occur even when there is no question that a gift was made to charity and no question about its amount. In addition, under Section 170(f)(11), if a contribution of property other than publicly traded securities in excess of $5,000 is made, the taxpayer has to get a "qualified appraisal" of the property. The appraisal may not be obtained more than 60 days before the date of the contribution or after the date on which the return claiming the deduction is filed or due. In other words, you can't make up for the lack of a qualified appraisal by getting one after you file your return. The appraisal has to meet requirements that are not surprising – but it is easy for an appraiser to overlook at least one of them. The appraisal must describe the property contributed, including its physical condition if it is tangible personal property; include the date of the donation; and include the terms of any understanding or agreement for the later sale of the property or uses to which it may be put. It must also state information regarding the appraiser, including the appraiser's qualifications, that the appraisal was made for income tax purposes, the date of the appraisal, and of course the fair market value of the contributed property.

The IRS regularly denies charitable contribution deductions to taxpayers who fail to follow the substantiation and appraisal requirements exactly. Recently, in *Cave Buttes, LLC v. Commissioner*, the IRS denied a charitable deduction where the appraisal (i) included the qualifications of only one of the two appraisers, (ii) did not contain the statement that it was made for income tax purposes (instead there was a statement that it was for "filing with the IRS"), and (iii) contained a difference in the valuation date and the contribution date of 11 to 21 days.

Although the Tax Court reversed the IRS and held that the taxpayers were entitled to the charitable deduction because the appraisal "substantially complied" with the necessary requirements, the bad news is that the taxpayers had to go to court and that this case stands out as a rare finding of an acceptable near miss. It's better for donors and their advisors to adhere strictly to the rules when claiming deductions for charitable contributions of property.

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