

Tax Court: No Mercy for Donors with Inadequate Receipts

Court case highlights the dangers of not following charitable deduction rules.

As most people know, tax laws require donors to document their gifts. If audited, donors must be able to provide the IRS with qualifying receipts of their contributions or risk having their deductions disallowed. A ruling by the U.S. Tax Court (*Durden v. Commissioner of Internal Revenue*) demonstrates the dangers to donors and nonprofits of not complying with the strict requirements for charitable contribution acknowledgments.¹

David and Veronda Durden had contributed \$25,171 to the Nevertheless Community Church, and the church sent them written acknowledgment. Unfortunately, the receipt failed to state that the Durdens hadn't received any goods or services in exchange for their contributions. The IRS requires that all acknowledgments contain such a statement.

After the IRS disallowed the deduction because of insufficient acknowledgment, the Durdens obtained a second receipt from their church, this time indicating that they received no goods or services in return for their contributions. The IRS rejected the second acknowledgment as well for not meeting the "contemporaneous" requirement.

The Durdens appealed to the Tax Court, but the Tax Court concluded that they had "failed strictly or substantially to comply with the clear substantiation requirements of section 170(f)(8), and their deduction for the charitable contributions must be disallowed." The Tax Court therefore affirmed the IRS's disallowance of the deduction.

Contribution Substantiation Requirements

This ruling serves as a reminder to all nonprofits of the need to properly acknowledge donations over \$250. Donors may not rely on a canceled check to substantiate such contributions. Internal Revenue Code (IRC) § 170(f)(8) requires donors to obtain a "contemporaneous written acknowledgment" of their contribution from the recipient charity. Donors must receive this qualifying acknowledgment *before* (1) they file the tax return reporting the gift, or (2) the due date for the return (including extensions), whichever comes first. As the Durdens and Nevertheless Community Church learned the hard way, the IRS may disallow the deduction if these requirements aren't met.

The IRC doesn't prescribe a specific format for the written acknowledgment. However, the acknowledgment must include:

- **the donor's name;**
- **the amount of cash, or a description of the property** contributed.² If one receipt is used to acknowledge two or more contributions, the contributions must be separately itemized;

¹T.C. Memo. 2012-140.

²The property description should not include a valuation of the property. The donor, not the charity, is responsible for valuing donated property.

- **a statement explaining whether the charity provided any goods or services in consideration**, in whole or in part, for the gift. If no goods or services were provided, this fact must be stated; and

- **a description and good faith estimate** of the value of any goods or services provided in consideration for the gift. If the only benefit the donor received was an "intangible religious benefit," this must also be stated. However, if the nonprofit provides goods or services of "insubstantial value" (such as address labels or other incentives), these needn't be taken into account for the purposes of the acknowledgment requirements.

The IRC contains different rules to substantiate donations that are: (1) \$250 or under, (2) made through a payroll deduction plan, or (3) deductible expenses for volunteer services.

“Donors must be able to provide the IRS with qualifying receipts.”

“Quid Pro Quo” Disclosure Requirements

A *quid pro quo* contribution is a payment made partly as a gift and partly for goods or services provided to the donor by the nonprofit. In such cases, the IRC allows a donor to deduct only the amount of the contribution that is above and beyond what the goods or services are worth.

IRC §6115 requires the nonprofit to provide a written disclosure statement to donors whose *quid pro quo* contributions exceed \$75. The disclosure statement must:

- **be in writing** and made in a manner "reasonably likely" to attract the donor's attention;
- **inform the donor** that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor *over* the value of goods or services provided by the charity; and
- **provide donors with a good-faith estimate** of the value of the goods or services they received in exchange for their contribution.

Note that the *quid pro quo* disclosure requirement is separate from the written acknowledgment requirement discussed above. However, a nonprofit can issue one document containing both acknowledgments. 

This article was prepared by Gammon & Grange (gg-law.com), a law firm serving nonprofit organizations and businesses throughout the United States and abroad.