

Henderson & Caverly Pum Charney LLP

EXEMPT ORGANIZATIONS NEWSLETTER

December 2016



SUBSTANTIATING CHARITABLE CONTRIBUTIONS AND WRITTEN ACKNOWLEDGEMENTS

Many charitable organizations described in Internal Revenue Code (“Code”) section 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with Code section 170. Most eligible organizations are listed in the [Exempt Organizations Select Check](#) tool located on the IRS website.

A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution in excess of \$75. A quid pro quo contribution is a payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity. For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution portion of the payment is \$60. Even though the part of the payment available for deduction does not exceed \$75, a disclosure statement must be filed because the donor's payment (quid pro quo contribution) exceeds \$75. The required written disclosure statement must:

1. 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
2. Provide the donor with a good faith estimate of the value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

No disclosure statement is required when:

1. The goods or services given to a donor meet the standards for insubstantial value set out in [Revenue Procedure 90-12](#) and [Revenue Procedure 92-49](#);
2. There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop); or
3. There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context.

A penalty is imposed on a charity that does not make the required disclosure in connection with a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Under a new recordkeeping rule effective for all cash, check, electronic funds transfers, credit card charges, or other monetary contributions of any amount made in taxable years beginning after August 17, 2006, the donor must obtain and keep a bank record or a written communication from the donee as a record of the contribution. Written records prepared by the donor (such as check registers or personal notations) are no longer sufficient to support charitable contributions. Bank records for this recordkeeping requirement include bank or credit union statements, canceled checks, or credit card statements. They must show the date paid or posted, the name of the charity, and the amount of the payment. Taxpayers who claim charitable contributions made by payroll deduction can satisfy the recordkeeping requirement if the donor has (1) a pay stub, W-2, or other document furnished by the employer that states the amount withheld for payment to charity,

and (2) a pledge card or other document prepared by or at the direction of the charity that shows the name of a donee. An organization described in Code section 170(c), or a Principal Combined Fund Organization for purposes of the Combined Federal Campaign, will be treated as a donee organization for purposes of the new recordkeeping provision.

A donor claiming a deduction of \$250 or more is also required to obtain and keep a contemporaneous written acknowledgment for a charitable contribution. To be contemporaneous the written acknowledgment must generally be obtained by the donor no later than the date the donor files the return for the year the contribution is made. The donee is not required to record or report this information to the IRS on behalf of a donor. The donor is responsible for requesting and obtaining the written acknowledgment from the donee.

The written acknowledgment required to substantiate a charitable contribution of \$250 or more must contain the following information:

- Name of the organization;
- Amount of cash contribution;
- Description (but not value) of non-cash contribution;
- Statement that no goods or services were provided by the organization, if that is the case;
- Description and good faith estimate of the value of goods or services, if any, that organization provided in return for the contribution; and
- Statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case.

In addition, a donor may claim a deduction for contributions of cash, check, or other monetary gifts only if the donor maintains certain written records. A donor may not claim a deduction for any contribution of cash, a check, or other monetary gift made on or after Jan. 1, 2007, unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution. For more information, see [IRS Publication 1771 Charitable Contributions Substantiations and Disclosure Requirements](#).

The contemporaneous written acknowledgment may be contained in the same document as the written communication from the donee used to satisfy the new cash recordkeeping requirement, as long as it contains all information required by both the recordkeeping requirement and the contemporaneous written acknowledgment requirement.

For claimed contributions over \$5,000, generally a qualified appraisal prepared by a qualified appraiser must be obtained. For appraisals prepared in connection with returns or submissions filed after August 17, 2006, see [IRS Notice 2006-96](#).

Household items and clothing contributed to charity after August 17, 2006 must be in at least good used condition to be deductible. This requirement does not apply to contributions of food, paintings, antiques, other art objects, jewelry and gems, or collections, and does not apply to a contribution of an item for which a deduction of more than \$500 is claimed if the taxpayer obtains a qualified appraisal of the item.

Additional substantiation and disclosure rules may apply when a donor contributes a vehicle to a charitable organization and claims the value of the vehicle is more than \$500. See [IRS Publication 4302, A Charity's Guide to Vehicle Donations](#), and [Publication 4303, A Donor's Guide to Vehicle Donations](#), for more information.

CHARITABLE 501(c)(3) ORGANIZATIONS MUST MEET INSPECTION AND DISCLOSURE REQUIREMENTS

Charitable organizations enjoy significant benefits, such as receiving tax-deductible contributions and not having to pay taxes on income. In return, Congress allows the public to inspect documents that these organizations file with the IRS.

An exempt organization must make available for public inspection its exemption application. An exemption application includes the IRS Form 1023 (for organizations recognized as exempt under Internal Revenue Code section 501(c)(3)), IRS Form 1024 (for organizations recognized as exempt under most other paragraphs of section 501(c)), or the letter submitted under the paragraphs for which no form is prescribed, together with supporting documents and any letter or document issued by the IRS concerning the application. A political organization exempt from taxation under Code section 527(a) must make available for public inspection and copying its notice of status, Form 8871.

An exempt organization must make available for public inspection and copying its annual return. Such returns include Form 990, Return of Organization Exempt From Income Tax, Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, Form 990-PF, Return of Private Foundation, Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and the Form 1065, U.S. Partnership Return of Income. A section 501(c)(3) organization must also make available for public inspection and copying any Form 990-T, Exempt Organization Business Income Tax Return, filed after August 17, 2006. Returns must be available for a three-year period beginning with the due date of the return (including any extension of time for filing). For this purpose, the return includes any schedules, attachments, or supporting documents that relate to the imposition of tax on the unrelated business income of the charity.



An exempt organization is not required to disclose Schedule K-1 of Form 1065 or Schedule A of Form 990-BL. With the exception of private foundations, an exempt organization is not required to disclose the name and address of any contributor to the organization.

A political organization exempt from taxation under section 527(a) must make available for inspection and copying its report of contributions and expenditures on Form 8872, Political Organization Report of Contributions and Expenditures. However, such organization is not required to make available its return on Form 1120-POL, U.S. Income Tax Return for Certain Political Organizations.

An exempt organization should have a binder on hand at its principal place of business containing the following materials:
i) IRS Form 1023 (or Form 1024) exemption application, including all supporting documents and any additional correspondence to and from the IRS regarding the exemption application, ii) the organization's IRS determination letter, and iii) the organization's three (3) most recent information returns. We recommend labeling the binder as "Public Inspection Binder," so it is easily located by staff.

UPCOMING EVENTS

Henderson Caverly is pleased to announce that Jonathan A. Grissom, Chair of our Tax Exempt Organizations Practice Group, is scheduled to speak at the University of San Diego's Institute for Nonprofit Education and Research 2017 Nonprofit Governance Symposium on January 13, 2017. Mr. Grissom will participate in the Workshop titled "*Annual Housekeeping and Compliance Concerns.*"

On January 20, 2017, Mr. Grissom is scheduled to speak on ESPN 1700AM Real Talk San Diego on the Live Well San Diego Radio Hour from 10:00 a.m. - 11:00 a.m. To listen in, tune your radio to 1700AM or listen live via the Real Talk Radio website.

San Diego (Main Office): 12750 High Bluff Drive, Suite 300, San Diego, CA 92130

Rancho Santa Fe (by appointment): 16236 San Dieguito Road, Suite 3-10, Rancho Santa Fe, CA 92067

Los Angeles (by appointment): 555 West 5th Street, 31st Floor, Los Angeles, CA 90013

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