

# Henderson & Caverly Purn LLP

## NONPROFIT ORGANIZATIONS NEWSLETTER

June 2018

### SUBSTANTIATING CHARITABLE CONTRIBUTIONS AND WRITTEN ACKNOWLEDGEMENTS



Many charitable organizations described in Internal Revenue Code (“Code”) section 501(c)(3), other than organizations that have as their charitable purpose testing for public safety, are eligible to receive tax-deductible contributions in accordance with Code section 170. Most eligible organizations are listed in the [Tax Exempt Organizations Search](#) 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 acknowledgement 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](#)

## NONPROFIT RAFFLES



In California, charities and certain other private nonprofit organizations may conduct raffles to raise funds for beneficial or charitable purposes in the state. This exception to the general constitutional prohibition against lotteries requires that at least 90 percent of the gross receipts from these raffles go directly to beneficial or charitable purposes in California. [Penal Code section 320.5](#) governs which organizations qualify and how the raffles must be conducted. The [Bureau of Gambling Control](#) regulates the [50/50 Major League Sports Raffle Program](#) established by [Penal Code 320.6](#).

Unless specifically exempted, a nonprofit organization must register with the Attorney General's Registry of Charitable Trusts before the raffle and must also file an aggregate financial disclosure report for all raffles held during the reporting year. Registration and reporting forms are identified below.

You may view information regarding raffles held by nonprofits in California using the [Registry Verification Search Tool](#).

An organization may register for raffles at any time during the calendar year. The registration period during which organizations may conduct raffles is September 1 through August 31. An organization must file the raffle registration form at least 60 days before the scheduled date of the raffle in order to give Registry staff sufficient time to process the form. Registration via [Form CT-NRP-1](#) must be filed and a confirmation letter from the Registry of Charitable Trusts must be received before conducting any raffle activities, including selling raffle tickets. If you wish to conduct the drawing after September 1 of any year, but you wish to sell tickets prior to September 1 of that year, you must register for both years. The Registry does not confirm receipt of raffle registration forms. An organization that wants confirmation that the Registry has received a form must submit the form to the Registry by requesting "certified receipt," a service available at the U.S. Post Office.

Regardless of the number of raffles held during the registration period, the nonprofit organization must file a single, aggregate report for all raffles held by filing [Form CT-NRP-2](#).

## MEETING THE NEEDS OF NONPROFIT ORGANIZATIONS

The laws governing nonprofit organizations are becoming increasingly complex and specialized. Our attorneys and paralegals are experienced in advising and guiding nonprofit organizations through all stages of development and business needs. Whether you are forming a new nonprofit organization or working for an established organization, our [Nonprofit Organizations Group](#) can assist your organization with its legal needs.

Contact the Chair of our Nonprofit Organizations Group, [Jon Grissom](#), to discuss formation of a charity or legal needs for your existing organization.



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