LIBERTY UNIVERSITY

Donation & Campaign/Solicitation Policy
Policy Number: 9101

PURPOSE:

To establish a policy that standardizes the establishment, implementation, and accounting for donations and campaign/solicitations. This policy's purpose is to gain pre-approval of all donations and campaign/solicitations; therefore, this policy is not intended to cover all tax guidance related to charitable contributions. In addition, non-cash gifts may not be accepted without approval of the Development Office and the CFO.

SCOPE:

This policy applies to Liberty University and its subsidiaries.

POLICY:

Campaign/Solicitation

Parties wishing to generate a campaign or any type of solicitation must have the approval of their department head. Furthermore, they must also have the approval of the Development and Finance Departments. The party initiating the campaign/solicitation is responsible for completing the Campaign/Solicitation Request Form and will be known as the requestor. All materials, programming, communication, and purpose of the campaign/solicitation must meet accounting guidelines and adhere to the mission of the University. All campaign/solicitations require the review and approval of the Development Department, Accounting Department and Budget Department prior to any initiation of the campaign/solicitation. The acquisition of all campaign materials needs to follow the Liberty University procurement approval process. Once the approval process is complete the Development Department will notify the requestor.

Donations

Donations are gifts to the University that have unconditional restrictions; intentionally voluntary; nonreciprocal in nature and without ownership ties. All department areas are required to deliver donations and donor correspondence, upon receipt, directly to the Donor Services Department. The Donor Services Department maintains all donations, donor records and donation receipting under the University's Banner Advancement Module. Tax receipts will be processed by Donor Services through the Advancement Module only. Under no circumstances is any university department authorized to issue tax receipts.

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Considerations for Quid Pro Quo Contributions[1]

A quid pro quo contribution is defined by the Internal Revenue Service (IRS) as "a payment made partly as a contribution and partly in consideration for goods and services provided to the payor by the donee organization". The value of the benefits, or 'premiums' the donor receives is a key factor in determining the amount of the actual donation. That value must be based on the fair market value of the benefit and not the cost to the University. Fair market value is the price the item would sell for on the open market. It is the price that would be agreed upon by a willing buyer and a willing seller. The amount of the donation that would be tax deductible by the donor is limited to the donation less the fair market value of the benefit received.

Items that have insubstantial value need not be deducted from the donor's contribution. The IRS established 'safe harbor" rules to determine insubstantial benefits. The following figures are for the year 2011 and are adjusted for inflation each year by the IRS.

- The fair market value of the premium does not exceed 2% of the amount of the amount donated or $97, whichever is less or
- The donor contributes $48.50 or more and the only benefits received in connection with the payment are token items (bookmarks, calendars, key chains, mugs, posters, tee-shirts, etc.) that bear the University logo. The cost (as opposed to the fair market value) of all the token items received by the donor must, in aggregate, be $9.70 or less.

Contact Information

- Donor Services – 592-6003 or customerrelations@liberty.edu
- Accounting – 592-3165 or Accounting@Liberty.edu

RESPONSIBILITY:

Chief Financial Officer (CFO) is responsible for approving the acceptance of non-cash gifts with the VP of Development.

VP of Development has the primary responsibility for administering this policy while establishing and maintaining University procedures associated with donations and campaign/solicitations. The VP of Development is also responsible for approving the acceptance of non-cash gifts with the CFO.

Assistant Controller, Accounting Manager and Advancement Accountant is responsible for all accounting aspects relating to bookkeeping, FOAPAL assignment, and adherence to IRS regulations in reference to premiums.

Requestor is responsible for completing the Campaign/Solicitation Request Form and

1 See Appendix B & E - IRS guidance on Quid Pro Contributions.

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adhering to University policy and mission.

Donor Services is responsible for recording all donations, maintaining donor records, and issuing tax receipts.

Cashier's Office is responsible for depositing all university donations. The cashier's office is also responsible for depositing and recording non-donation receipts.

DEFINITIONS:

Campaign/Solicitation is the collection of funds through promotional communications and/or event programming for the purposes of obtaining university donations, or organizational budget enhancements.

Contributions (Donations) " is an unconditional transfer of cash or other assets to an entity (college/university), or a settlement or cancellation of the college or university's liability in a voluntary nonreciprocal transfer by another entity acting other than as an owner", per section 462.2 of the Financial Accounting and Reporting Manual for Higher Education (FARM)[2], published by the National Association of College and University Business Officers (NACUBO).

Premium is the term applied to merchandise, goods, or services that the University gives the donor in exchange for their donation.

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[2] See Appendix A - Acronymns

APPENDICES INDEX

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APPENDIX A

ACRONYMNS

FARM	Financial Accounting and Reporting Manual
FOAPAL	Fund, Org, Account, Program, Activity, Location
NACUBO	National Association of College and University Business Officers.

APPENDIX B

Inflation Adjustments for 2011

Rev. Proc. 2010-40, I.R.B. 2010-46, November 15, 2010. Standard Federal Income Tax Report (2011)

Section 3.16 *Insubstantial Benefit Limitations for Contributions Associated with Charitable Fund-Raising Campaigns.*

(1) Low cost article. For taxable years beginning in 2011, the unrelated business income of certain exempt organizations under § 513(h)(2) does not include a "low cost article" of $9.70 or less.

(2) Other insubstantial benefits. For taxable years beginning in 2011, the $5, $25, and $50 guidelines in section 3 of Rev. Proc. 90-12, 1990-1 C.B. 471 (as amplified by Rev. Proc. 92-49, 1992-1 C.B. 987, and modified by Rev. Proc. 92-102, 1992-2 C.B. 579), for disregarding the value of insubstantial benefits received by a donor in return for a fully deductible charitable contribution under § 170, are $9.70, $48.50, and $97, respectively[3].

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[3] See Appendix E – Rev. Proc. 90-12, Section 3. Guidelines

Internal Revenue Code, SEC. 513(h), Certain Distributions of Low Cost Articles Without Obligation to Purchase and Exchanges and Rentals of Member Lists

513(h) Certain distributions of low cost articles without obligation to purchase and exchanges and rentals of member lists

(1) In general

In the case of an organization which is described in section 501 and contributions to which are deductible under paragraph (2) or (3) of section 170 (c), the term "unrelated trade or business" does not include—

(A) activities relating to the distribution of low cost articles if the distribution of such articles is incidental to the solicitation of charitable contributions, or

(B) any trade or business which consists of—

(i) exchanging with another such organization names and addresses of donors to (or members of) such organization, or

(ii) renting such names and addresses to another such organization.

(2) Low cost article defined

For purposes of this subsection—

(A) In general

The term "low cost article" means any article which has a cost not in excess of $5 to the organization which distributes such item (or on whose behalf such item is distributed).

(B) Aggregation rule

If more than 1 item is distributed by or on behalf of an organization to a single distributee in any calendar year, the aggregate of the items so distributed in such calendar year to such distributee shall be treated as 1 article for purposes of subparagraph (A).

(C) Indexation of $5 amount

In the case of any taxable year beginning in a calendar year after 1987, the $5 amount in subparagraph (A) shall be increased by an amount equal to—

(i) $5, multiplied by

(ii) the cost-of-living adjustment determined under section 1 (f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1987" for "calendar year 1992" in subparagraph (B) thereof.

(3) Distribution which is incidental to the solicitation of charitable contributions described

For purposes of this subsection, any distribution of low cost articles by an organization shall be treated as a distribution incidental to the solicitation of charitable contributions only if—

(A) such distribution is not made at the request of the distributee,

(B) such distribution is made without the express consent of the distributee, and

(C) the articles so distributed are accompanied by—

(i) a request for a charitable contribution (as defined in section 170 (c)) by the distributee to such organization, and

(ii) a statement that the distributee may retain the low cost article regardless of whether such distributee makes a charitable contribution to such organization.

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Revenue Ruling 67-246, 1967-2 CB 104, Contributions and Gifts

SECTION 170.--CHARITABLE, ETC., CONTRIBUTIONS AND GIFTS

Deductibility, as charitable contributions under section 170 of the Internal Revenue Code of 1954, of payments made by taxpayers in connection with admission to or other participation in fund-raising activities for charity such as charity balls, bazaars, banquets, shows, and athletic events.

[Text]

Advice has been requested concerning certain fund-raising practices which are frequently employed by or on behalf of charitable organizations and which involve the deductibility, as charitable contributions under section 170 of the Internal Revenue Code of 1954, of payments in connection with admission to or other participation in fund-raising activities for charity such as charity balls, bazaars, banquets, shows, and athletic events.

Affairs of the type in question are commonly employed to raise funds for charity in two ways. One is from profit derived from sale of admissions or other privileges or benefits connected with the event at such prices as their value warrants. Another is through the use of the affair as an occasion for solicitation of gifts in combination with the sale of the admissions or other privileges or benefits involved. In cases of the latter type the sale of the privilege or benefit is combined with solicitation of a gift or donation of some amount in addition to the sale value of the admission or privilege.

The need for guidelines on the subject is indicated by the frequency of misunderstanding of the requirements for deductibility of such payments and increasing incidence of their erroneous treatment for income tax purposes.

In particular, an increasing number of instances are being reported in which the public has been erroneously advised in advertisements or solicitations by sponsors that the entire amounts paid for tickets or other privileges in connection with fund-raising affairs for charity are deductible. Audits of returns are revealing other instances of erroneous advice and misunderstanding as to what, if any, portion of such payments is deductible in various circumstances. There is evidence also of instances in which taxpayers are being misled by questionable solicitation practices which make it appear from the wording of the solicitation that taxpayer's payment is a "contribution," whereas the payment solicited is simply the purchase price of an item offered for sale by the organization.

Section 170 of the Code provides for allowance of deductions for charitable contributions, subject to certain requirements and limitations. To the extent here relevant a charitable contribution is defined by that section as "a contribution or gift to or for the use of" certain specified types of organizations.

To be deductible as a charitable contribution for Federal income tax purposes under section 170 of the Code, a payment to or for the use of a qualified charitable organization must be a gift. To be a gift for such purposes in the present context there must be, among other requirements, a payment of money or transfer of property without adequate consideration.

As a general rule, where a transaction involving a payment is in the form of a purchase of an item of value, the presumption arises that no gift has been made for charitable contribution purposes, the presumption being that the payment in such case is the purchase price.

Thus, where consideration in the form of admissions or other privileges or benefits is received in connection with payments by patrons of fund-raising affairs of the type in question, the presumption is that the payments are not gifts. In such case, therefore, if a charitable contribution deduction is claimed with respect to the payment, the burden is on the taxpayer to establish that the amount paid is not the purchase price of the privileges or benefits and that part of the payment, in fact, does qualify as a gift.

In showing that a gift has been made, an essential element is proof that the portion of the payment claimed as a gift represents the excess of the total amount paid over the value of the consideration received therefor. This may be established by evidence that the payment exceeds the fair market value of the privileges or other benefits received by the amount claimed to have been paid as a gift.

Another element which is important in establishing that a gift was made in such circumstances, is evidence that the payment in excess of the value received was made with the intention of making a gift. While proof of such intention may not be an essential requirement under all circumstances and may sometimes be inferred from surrounding circumstances, the intention to make a gift is, nevertheless, highly relevant in overcoming doubt in those cases in which there is a question whether an amount was in fact paid as a purchase price or as a gift.

Regardless of the intention of the parties, however, a payment of the type in question can in any event qualify as a deductible gift only to the extent that it is shown to exceed the fair market value of any consideration received in the form of privileges or other benefits.

In those cases in which a fund-raising activity is designed to solicit payments which are intended to be in part a gift and in part the purchase price of admission to or other participation in an event of the type in question, the organization conducting the activity should employ procedures which make clear not only that a gift is being solicited in connection with the sale of the admissions or other privileges related to the fund-raising event, but also, the amount of the gift being solicited. To do this, the amount properly attributable to the purchase of admissions or other privileges and the amount solicited as a gift should be determined in advance of solicitation. The respective amounts should be stated in making the solicitation and clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

In making such a determination, the full fair market value of the admission and other benefits or privileges must be taken into account. Where the affair is reasonably comparable to events for which there are established charges for admission, such as theatrical or athletic performances, the established charges should be treated as fixing the fair market value of the admission or privilege. Where the amount paid is the same as the standard admission charge there is, of course, no deductible contribution, regardless of the intention of the parties. Where the event has no such counterpart, only that portion of the payment which exceeds a reasonable estimate of the fair market value of the admission or other privileges may be designated as a charitable contribution.

The fact that the full amount or a portion of the payment made by the taxpayer is used by the organization exclusively for charitable purposes has no bearing upon the determination to be made as to the value of the admission or other privileges and the amount qualifying as a contribution.

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Also, the mere fact that tickets or other privileges are not utilized does not entitle the patron to any greater charitable contribution deduction than would otherwise be allowable. The test of deductibility is not whether the right to admission or privileges is exercised but whether the right was accepted or rejected by the taxpayer. If a patron desires to support an affair, but does not intend to use the tickets or exercise the other privileges being offered with the event, he can make an outright gift of the amount he wishes to contribute, in which event he would not accept or keep any ticket or other evidence of any of the privileges related to the event connected with the solicitation.

The foregoing summary is not intended to be all inclusive of the legal requirements relating to deductibility of payments as charitable contributions for Federal income tax purposes. Neither does it attempt to deal with many of the refinements and distinctions which sometimes arise in connection with questions of whether a gift for such purposes has been made in particular circumstances.

The principle stated are intended instead to summarize with as little complexity as possible, those basic rules which govern deductibility of payments in the majority of the circumstances involved. They have their basis in section 170 of the Code, the regulations thereunder, and in court decisions. The observance of these provisions will provide greater assurance to taxpayer contributors that their claimed deductions in such cases are allowable.

Where it is disclosed that the public or the patrons of a fund-raising affair for charity have been erroneously informed concerning the extent of the deductibility of their payments in connection with the affair, it necessarily follows that all charitable contribution deductions claimed with respect to payments made in connection with the particular event or affair will be subject to special scrutiny and may be questioned in audit of returns.

In the following examples application of the principles discussed above is illustrated in connection with various types of fund-raising activities for charity. Again, the examples are drawn to illustrate the general rules involved without attempting to deal with distinctions that sometimes arise in special situations. In each instance, the charitable organization involved is assumed to be an organization previously determined to be qualified to receive deductible charitable contributions under section 170 of the Code, and the references to deductibility are to deductibility as charitable contributions for Federal income tax purposes.

Example 1:

The M Charity sponsors a symphony concert for the purpose of raising funds for M's charitable programs. M agrees to pay a fee which is calculated to reimburse the symphony for hall rental, musicians' salaries, advertising costs, and printing of tickets. Under the agreement, M is entitled to all receipts from ticket sales. M sells tickets to the concert charging $5 for balcony seats and $10 for orchestra circle seats. These prices approximate the established admission charges for concert performances by the symphony orchestra. The tickets to the concert and the advertising material promoting ticket sales emphasize that the concert is sponsored by, and is for the benefit of M Charity.

Notwithstanding the fact that taxpayers who acquire tickets to the concert may think they are making a charitable contribution to or for the benefit of M Charity, no part of the payments made is deductible as a charitable contribution for Federal income tax purposes. Since the payments

approximate the established admission charge for similar events, there is no gift. The result would be the same even if the advertising materials promoting ticket sales stated that amounts paid for tickets are "tax deductible" and tickets to the concert were purchased in reliance upon such statements. Acquisition of tickets or other privileges by a taxpayer in reliance upon statements made by a charitable organization that the amounts paid are deductible does not convert an otherwise nondeductible payment into a deductible charitable contribution.

Example 2:

The facts are the same as in Example 1, except that the M Charity desires to use the concert as an occasion for the solicitation of gifts. It indicates that fact in its advertising material promoting the event, and fixes the payments solicited in connection with each class of admission at $30 for orchestra circle seats and $15 for balcony seats. The advertising and the tickets clearly reflect the fact that the established admission charges for comparable performances by the symphony orchestra are $10 for orchestra circle seats and $5 for balcony seats, and that only the excess of the solicited amounts paid in connection with admission to the concert over the established prices is a contribution to M.

Under these circumstances a taxpayer who makes a payment of $60 and receives two orchestra circle seat tickets can show that his payment exceeds the established admission charge for similar tickets to comparable performances of the symphony orchestra by $40. The circumstances also confirm that that amount of the payment was solicited as, and intended to be, a gift to M Charity. The $40, therefore, is deductible as a charitable contribution.

Example 3:

A taxpayer pays $5 for a balcony ticket to the concert described in Example 1. This taxpayer had no intention of using the ticket when he acquired it and he did not, in fact, attend the concert.

No part of the taxpayer's $5 payment to the M Charity is deductible as a charitable contribution. The mere fact that the ticket to the concert was not used does not entitle the taxpayer to any greater right to a deduction than if he did use it. The same result would follow if the taxpayer had made a gift of the ticket to another individual. If the taxpayer desired to support M, but did not intend to use the ticket to the concert, he could have made a qualifying charitable contribution by making a $5 payment to M and refusing to accept the ticket to the concert.

Example 4:

A receives a brochure soliciting contributions for the support of the M Charity. The brochure states: "As a grateful token of appreciation for your help, the M Charity will send to you your choice of one of the several articles listed below, depending upon the amount of your donation." The remainder of the brochure is devoted to a catalog-type listing of articles of merchandise with the suggested amount of donation necessary to receive each particular article. There is no evidence of any significant difference between the suggested donation and the fair market value of any such article. The brochure contains the further notation that all donations to M Charity are tax deductible.

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Payments of the suggested amounts solicited by M Charity are not deductible as a charitable contribution. Under the circumstances, the amounts solicited as "donations" are simply the purchase prices of the articles listed in the brochure.

Example 5:

A taxpayer paid $5 for a ticket which entitled him to a chance to win a new automobile. The raffle was conducted to raise funds for the X Charity. Although the payment for the ticket was solicited as a "contribution" to the X Charity and designated as such on the face of the ticket, no part of the payment is deductible as a charitable contribution. Amounts paid for chances to participate in raffles, lotteries, or similar drawings or to participate in puzzle or other contests for valuable prizes are not gifts in such circumstances, and therefore, do not qualify as deductible charitable contributions.

Example 6:

A women's club, which serves principally as an auxiliary of the X Charity, holds monthly membership luncheon meetings. Following the luncheon and any entertainment that may have been arranged, the members transact any membership business which may be required. Attendance of the luncheon meetings is promoted through the advance sale of tickets. Typical of the form of the tickets is the following:

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While the ticket does not specifically state that the amount is tax deductible, the characterization of the $5.50 price of the ticket as a "donation" is highly misleading in that it is done in a context which suggests that the price of the ticket is a charitable contribution and, therefore, tax deductible. On the facts recited, no part of the payment is deductible, since there is no showing that any part of the price of the ticket is in fact a gift of an amount in excess of the fair market value of the luncheon and entertainment.

Example 7:

In support of its summer festival program of 10 free public concerts, the M Symphony, a charitable organization, mails out brochures soliciting contributions from its patrons. The brochure recites the purposes and activities of the organization, and as an inducement to contributors states that:

"A contribution of $20 entitles the donor to festival membership for the season and free admission to the premiere showing of the motion picture * * * starring * * * and * * *

Cocktails--7:00 P.M.

Curtain--8:15 P.M.

This special premiere performance is not open to the public.

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"Your contribution will benefit an important community function; it also entitles you to choice reserved seats for all summer festival concerts and events."

The envelope furnished for mailing in payments contains the following:

"Enclosed is my tax-deductible membership contribution to the M Symphony summer concert program in the amount of $--.

"□ Send me -- tickets to the May 1 premiere performance.

"□ I do not desire to attend the special premiere performance for festival members, but I am enclosing my contribution."

A taxpayer mails in a payment of $20, indicating on the envelope form that he desires a ticket to the premiere showing of the film.

No part of the payment is deductible as a charitable contribution. Payment of the $20 entitles an individual not only to the privilege of attending the cocktail party and the premiere showing of the film, but also the privilege of choice reserved seats for the summer festival concerts. Under the circumstances, no part of the payment qualifies as a gift, since there is no showing that the payment exceeds the fair market value of the privileges involved. Even if a "contributor" indicates he does not desire to attend the cocktail party and premiere showing of the film, it would still be incorrect for the organization to characterize the $20 payment as a deductible charitable contribution, since under these circumstances the fair market value of the privilege of having choice reserved seats for attending the concerts would, in all likelihood, exceed the amount of the payment. However, if the taxpayer wishes to support the M Symphony, and advises the organization that the does not desire the ticket to the premiere and does not want seats reserved for him, the amount contributed to M is deductible as a charitable contribution.

Example 8:

In order to raise funds, W Charity plans a theater party consisting of admission to a premiere showing of a motion picture and an aftertheater buffet. The advertising material and tickets to the theater party designate $5 as an admission charge and $10 as a gift to W Charity. The established admission charge for premiere showings of motion pictures in the locality is $5.

Notwithstanding W's representations respecting the amount designated as a gift, the specified $10 does not qualify as a deductible charitable contribution because W's allocation fails to take into account the value of admission to the buffet dinner.

Example 9:

The X Charity sponsors a fund-raising bazaar, the articles offered for sale at the bazaar having been contributed to X by persons desiring to support X's charitable programs. The prices for the articles sold at the bazaar are set by a committee of X with a view to charging the full fair market value of the articles.

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A taxpayer who purchases articles at the bazaar is not entitled to a charitable contribution deduction for any portion of the amount paid to X for such articles. This is true even though the articles sold at the bazaar are acquired and sold without cost to X and the total proceeds of the sale of the articles are used by X exclusively for charitable purposes.

Example 10:

The members of the M Charity undertake a program of selling Christmas cards to raise funds for the organization's activities. The cards are purchased at wholesale prices and are resold at prices comparable to the prices at which similar cards are sold by regular retail outlets. On the receipts furnished to its customers, the difference between the amount received from the customer and the wholesale cost of the cards to the organization is designated by the organization as a tax-deductible charitable contribution.

The organization is in error in designating this difference as a tax-deductible charitable contribution. The amount paid by customers in excess of the wholesale cost of the cards to the organization is not a gift to the organization, but instead is part of the purchase price or the fair market value of the cards at the retail level.

Example 11:

In support of the annual fund-raising drive of the X Charity, a local department store agrees to award a transistor radio to each person who contributes $50 or more to the charity. The retail value of the radio is $15. B receives one of the transistor radios as a result of his contribution of $100 to X. Only $85 of B's payment to X qualifies as a deductible charitable contribution. In determining the portion of the payment to a charitable organization which is deductible as a charitable contribution in these circumstances, the fair market value of any consideration received for the payment from any source must be subtracted from the total payment.

Example 12:

To assist the Y Charity in the promotion of a Halloween Ball to raise funds for Y's activities, several individuals in the community agree to pay the entire costs of the event, including the costs of the orchestra, publicity, rental of the ballroom, refreshments, and any other necessary expenses. Various civic organizations and clubs agree to undertake the sale of tickets for the dance. The publicity and solicitations for the sale of the tickets emphasize the fact that the entire cost of the ball is being borne by anonymous patrons of Y and by the other community groups, and that the entire gross receipts from the sale of the tickets, therefore, will go to Y Charity. The price of the tickets, however, is set at the fair market value of admission to the event.

No part of the amount paid for admission to the dance is a gift. Therefore, no part is deductible as a charitable contribution. The fact that the event is conducted entirely without cost to Y Charity and that the full amount of the admission charge goes directly to Y for its uses has no bearing on the deductibility of the amounts paid for admission, but does have a bearing on the deductibility of the amounts paid by the anonymous patrons of the event. The test is not the cost of the event to Y, but the fair market value of the consideration received by the purchaser of the ticket or other privileges for his payment.

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Revenue Procedure 90-12, 1990-1 CB 471 Charitable Contributions and Gifts

[*Code Sec. 170*]

Itemized deductions: Corporations: Charitable contributions and gifts.--New guidelines on the deductibility of contributions to charities that provide token benefits to contributors have been announced. BACK REFERENCES: 90FED ¶1864.30 and 90FED ¶1864.3004.

SECTION I. PURPOSE

These guidelines are intended to provide charitable organizations with help in advising their patrons of the deductible amount of contributions under section 170 of the Code when the contributors are receiving something in return for their contributions. These guidelines will also be used by agents in determining whether charities have provided accurate information about deductibility to their contributors.

SECTION 2. BACKGROUND

.01 Recently, the Congress expressed concern that charities do not accurately inform their patrons of the extent to which contributions are deductible. In expressing its concern, the Congress stated that it "anticipates that the Internal Revenue Service will monitor the extent to which taxpayers are being furnished accurate and sufficient information by charitable organizations as to the nondeductibility of payments to such organizations where benefits or privileges are received in return, so that taxpayers can correctly compute their Federal income tax liability." H.R. Rep. No. 100-391, 100th Cong., 1st Sess. 1608 (1987).

.02 In August 1988, the Service sent Publication 1391, Deductibility of Payments Made to Charities Conducting FundRaising Events, to over 400,000 charities. Publication 1391 contains a message from the Commissioner of the Internal Revenue Service asking charities for help in informing contributors more accurately about the deductibility of contributions made in connection with fund-raising events and programs.

.03 Publication 1391 also contains a copy of Rev. Rul. 67-246, 1967-2 C.B. 104, which discusses the rules that apply in determining the amount of a charitable contribution under section 170 of the Code when something of value is received in return for the contribution. Rev. Rul. 67-246 also sets forth a simple procedure that charities can use to provide "accurate and sufficient" information to their contributors.

.04 Rev. Rul. 67-246 asks charities to determine the fair market value of the benefits offered for contributions in advance of a solicitation and to state in the solicitation and in tickets, receipts, or other documents issued in connection with a contribution how much is deductible under section 170 of the Code and how much is not. If charities are unable to make an exact determination of the fair market value of the benefits, Rev. Rul. 67-246 indicates that they should use a reasonable estimate of fair market value.

.05 Many charities have suggested that this determination is difficult or burdensome particularly in the case of small items or other benefits that are of token value in relation to the amount

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contributed. The Service has determined that a benefit may be so inconsequential or insubstantial that the full amount of a contribution is deductible under section 170 of the Code. Under the following guidelines, charities offering certain small items or other benefits of token value may treat the benefits as having insubstantial value so that they may advise contributors that contributions are fully deductible under section 170.

SECTION 3. GUIDELINES

.01 Benefits received in connection with a payment to a charity will be considered to have insubstantial fair market value for purposes of advising patrons if the requirements of paragraphs 1 and 2 are met:

1. The payment occurs in the context of a fund-raising campaign in which the charity informs patrons how much of their payment is a deductible contribution, and either

2. (a) The fair market value of all of the benefits received in connection with the payment, is not more than 2 percent of the payment, or $50, whichever is less, or

(b) The payment is $25 (adjusted for inflation as described below) or more and the only benefits received in connection with the payment are token items (bookmarks, calendars, key chains, mugs, posters, tee shirts, etc.) bearing the organization's name or logo. The cost (as opposed to fair market value) of all of the benefits received by a donor must, in the aggregate, be within the limits established for "low cost articles" under section 513(h)(2) of the Code. (Generally, under section 170, the deductible amount of a contribution is determined by taking into account the fair market value, not the cost to the charity, of any benefits received in return. For administrative reasons, however, in the limited circumstances of this subparagraph, the cost to the charity may be used in determining whether the benefits are insubstantial.)

.02 For purposes of paragraph 1 of section 3.01, above, a qualifying fund-raising campaign is one designed to raise tax-deductible contributions, in which the charity determines the fair market value of the benefits offered in return for contributions (using a reasonable estimate if an exact determination is not possible), and states in its solicitations (whether written, broadcast, telephoned, or in person)--as well as in tickets, receipts, or other documents issued in connection with contributions--how much is deductible under section 170 of the Code and how much is not. If a charity is providing only insubstantial benefits in return for a payment, fund-raising materials should include a statement to the effect that: "Under Internal Revenue Service guidelines the estimated value of [the benefits received] is not substantial; therefore the full amount of your payment is a deductible contribution."

.03 There may be situations in which it is impractical to state in every solicitation how much of a payment is deductible. For example, where a nonprofit broadcasting organization offers a number of premiums in an on-air fund-raising announcement, it may be unduly cumbersome to include information on the fair market value of each premium. If a charity believes that stating how much is deductible in every statement is impractical, it may seek a ruling from the Service concerning an alternative procedure. The Service will rule on whether the alternative procedure meets the Congressionally mandated goal of providing accurate and sufficient information to contributors. See Rev. Proc. 90-4, page 410, this Bulletin.

.04 For purposes of paragraph 2 of section 3.01, above, newsletters or program guides (other than commercial quality publications) will be treated as if they do not have a measurable fair market value or cost if their primary purpose is to inform members about the activities of an organization and if they are not available to nonmembers by paid subscription or through newsstand sales. Whether a publication is considered a commercial quality publication depends upon all of the facts and circumstances. Generally, publications that contain articles written for compensation and that accept advertising will be treated as commercial quality publications having measurable fair market value or cost. Professional journals (whether or not articles are written for compensation and advertising is accepted) will normally be treated as commercial quality publications. For purposes of subparagraph (b) of paragraph 2, the cost of a commercial quality publication includes the costs of production and distribution and must be computed without regard to income from advertising or newsstand or subscription sales.

.05 In applying paragraph 2, the total amount of a pledge payable in installments will be considered to be the amount of the payment. Also, benefits provided by charities in the form of cash or its equivalent will never be considered insubstantial.

.06 For purposes subparagraph (b) of paragraph 2, an item is a "low cost article" under section 513(h)(2) of the Code if its cost does not exceed $5, increased for years after 1987 by a cost-of-living adjustment under section 1(f)(3). The $25 payment required in subparagraph (b) of paragraph 2 must also be increased, in the same manner. For calendar year 1990, the cost of a "low cost article" under section 513(h)(2) cannot exceed $5.45. The adjusted required payment is $27.26. See Rev. Proc. 90-7, page 432, this Bulletin.

.07 For purposes of subparagraph (b) of paragraph 2, if items offered to contributors are donated to the charity or if services are donated in connection with the production of an item, the cost "to the organization" for purposes of section 513(h)(2) of the Code will be a reasonable estimate of the amount. the organization would have to pay for the items or services in question.

.08 These guidelines describe a safe harbor; depending on the facts in each case, benefits received in connection with contributions may be "insubstantial" even if they do not meet these guidelines.

SECTION 4. EXAMPLES

The following examples illustrate the application of the guidelines. In each example, it is assumed that the charity is engaged in a fund-raising campaign which informs patrons how much of their payment is tax deductible as required by paragraph 1 of section 3.01:

Example 1. A zoo gives its patrons lapel pins reading "Friends of the Small City Zoo" in return for payments of $15. The fair market value of the lapel pin is $.25. Since the lapel pin bears the organization's name and the fair market value of the pin is less than 2 percent of the payment (and the fair market value of the pin is less than $50), the zoo may advise its patrons that the full amount of the payment is a deductible contribution.

Example 2. Assume the same facts as Example 1., except that the zoo also sends patrons a newsletter the primary purpose of which is to inform members about the activities of the zoo. The newsletter is not available to nonmembers by paid subscription or through newsstand sales.

Moreover, it is not a "commercial quality publication" as described in section 3.04, above. Since the newsletter has no fair market value for purposes of paragraph 2, and since the fair market value of the pin is less than 2 percent of the payment (and less than $50), the zoo may advise its patrons that the full amount of the payment is a deductible contribution.

Example 3. For a payment of $15, a museum sends its patrons a bulletin the primary purpose of which is to inform members about coming events at the museum. The bulletin is not available to nonmembers by paid subscription or through newsstand sales. The bulletin is written by a salaried staff member at the museum, but it accepts no advertising. It is printed on magazine quality paper and it is distributed on a quarterly basis. Under the facts and circumstances, the bulletin is not a "commercial quality publication" as described in section 3.04, above. Since the bulletin has no fair market value for purposes of paragraph 2 the museum may advise its patrons that the full amount of the payment is a deductible contribution.

Example 4. In 1990, a nonprofit broadcast organization sends its patrons a listener's guide for one year in return for a contribution of $30. The cost of production and distribution of the listener's guide is $4 per year per patron and its fair market value is $6. The listener's guide is not available to nonmembers by paid subscription or through newsstand sales. It is written by a salaried staff member at the broadcast organization and it accepts advertising. The listener's guide, therefore, is a "commercial quality publication" as described in section 3.04, above. However, since the cost of the listener's guide is $4 and it is received in return for a contribution of $30, the broadcast organization may advise its patrons that the full amount of the payment is a deductible contribution.

Example 5. Assume the same facts as Example 4, except that the nonprofit broadcast organization also gives its patrons a coffee mug with the organization's logo. The cost of a mug to the organization is $3. Its fair market value is $5. Since the listener's guide costs $4 and the coffee mug costs $3, their aggregate cost exceeds the 1990 limit of section 513(h)(2) of $5.45. The organization should inform its patrons that $19 of their contribution is deductible and $11 is not. The result would be the same even if these benefits were received separately in return for two separate contributions of $30 each. Under section 513(h)(2), the cost of all the low cost items received in one year is aggregated in determining whether the limit is exceeded.

SECTION 5. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 67-246, 1967-2 C.B. 104 is amplified.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is David W. Jones of the Exempt Organizations Technical Division. For further information regarding this notice contact Mr. Jones on (202) 343-8900 (not a toll free number).

DRAFT

Revenue Procedure 92-49, I.R.B 1992-26, 18 Token Benefits

[Code Secs. 761, 6031, 6041 and 7701]

Definitions: Lease v. joint venture: Coin-operated amusements.--The IRS has amplified Rev. Rul. 57-7 by ruling that the particular facts determine whether an arrangement between an owner of coin-operated amusements and an owner of a business establishment is a joint venture or a lease. Taxpayers who in good faith take a position that is later recharacterized by the IRS will not be subject to penalties for failing to report in accordance with the recharacterized arrangement. BACK REFERENCES: 92FED ¶25,902.03, 92FED ¶36,589.01, 92FED ¶36,936.067 and 92FED ¶43,886.01.

ISSUE

What reporting requirements apply for income tax purposes if an owner of coin-operated amusements arranges with the owner of a business establishment to place amusements on the business premises and divide the receipts from the amusements between themselves?

FACTS

Owners of coin-operated amusements arrange with owners of businesses to place amusements on their business premises. Coin-operated amusements include video games, pinball machines, jukeboxes, pool tables, slot machines, and other machines and gaming devices that are operated by coins or tokens inserted into the machines by individual users.

The arrangements between the owners of the coin-operated amusements and the business owners may be established pursuant to written or oral agreements, the terms of which may vary. Typically, income from the operation of the coin-operated amusements is divided between the owner of the coin-operated amusements and the owner of the business on a percentage basis.

LAW AND ANALYSIS

Section 6041(a) of the Internal Revenue Code provides that all persons engaged in a trade or business and making payment in the course of the trade or business to another person of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income (other than payments, not relevant here, dealt with by other Code sections), of $600 or more in any taxable year must render a true and accurate return to the Secretary setting forth the amount of the gains, profits, and income, and the name and address of the recipient of the payment.

Section 1.6041-3(c) of the Income Tax Regulations provides, in material part, that returns of information are not required under section 6041 of the Code with respect to payments to a corporation.

Section 6031(a) of the Code provides that every partnership (as defined in section 761(a)) must make a return for each taxable year, stating specifically the items of its gross income and the deductions allowable by subtitle A, and other information for the purpose of carrying out the provisions of subtitle A as the Secretary may by forms and regulations prescribe. This partnership return must

include the names and addresses of the individuals who would be entitled to share in the taxable income if distributed and the amount of the distributive share of each individual

Sections 761(a) and 7701(a)(2) of the Code define a partnership as a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not a corporation or a trust or estate.

Rev. Rul. 57-7, 1957-7 C.B. 435, describes an arrangement between the owner of coin-operated amusements and the occupant of premises that constitutes, based upon the particular facts, a lease of space by the occupant as lessor to the owner of the amusements as lessee. Rev. Rul. 57-7 holds that if the remuneration paid by the owner of the amusements to the occupant of the premises (if other than a corporation) in any taxable year amounts to $600 or more, the owner of the amusements must file, under section 6041 of the Code, an information return on Form 1099 to report that remuneration.

In Manchester Music Company, Inc. v. United States, 733 F. Supp. 473 (D. N.H. 1990), the court concluded that certain agreements between an owner of coin-operated amusements and owners of establishments where the amusements were placed constituted joint ventures. Therefore, the court held that the owner of the amusements was not required to file Forms 1099.

HOLDING

Whether an arrangement between an owner of coin-operated amusements and an owner of a business establishment is a lease or a joint venture is determined upon the particular facts. If the arrangement is a lease of either the amusements or the amusement space by a lessor other than a corporation, the lessee must file, under section 6041 of the Code, an information return on Form 1099 for any taxable year in which the lessee payments aggregate $600 or more. However, if the arrangement is a joint venture, the joint venture must file, under section 6031, a partnership return on Form 1065 and must provide each partner with the information necessary to report the partner's distribute share of the taxable income.

APPLICATION

The Internal Revenue Service will continue to take the position that an arrangement like that in Rev. Rul. 57-7 is a lease of space upon which the amusements are placed. If a taxpayer, in good faith, takes the position that an equivalent arrangement is a lease and the requirements of section 6041 of the Code are met, the Service generally will not challenge the position; however, if the Service recharacterizes the arrangement as a joint venture, the taxpayer will not be subject to any penalties for failure to meet the reporting requirements of section 6031. Nevertheless, if a taxpayer, in good faith, takes the position that such an arrangement is a joint venture and the reporting requirements of section 6031 are met, the Service generally will not challenge the position; however, if the Service recharacterizes the arrangement as a lease, the taxpayer will not be subject to any penalties for failure to meet the reporting requirements of section 6041.

EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 57-7 is amplified.

DRAFTING INFORMATION

The principal author of this revenue ruling is Christopher G. Kehoe of the Office of Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact Mr. Kehoe on (202) 377-9667 (not a toll-free call).

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