How Charitable Organizations Can Help Ensure Their Donors Receive Tax Deductions

Charitable organizations need donor support in order to maintain their operations and engage in their important work. Numerous economic factors, from the COVID-19 pandemic to the highest rates of inflation seen in decades, have created considerable uncertainty in the world of philanthropic giving. Nonprofits must work hard to retain their existing donors and attract new ones. Federal tax laws provide incentives to encourage donations to charitable organizations. A recent decision from the U.S. Tax Court, *Albrecht v. Commissioner*, offers a stern reminder about organizations' obligation to help their donors access the tax benefits that come from charitable donations. Read on to learn about how your organization can avoid causing its donors to lose their charitable tax deductions.

What Federal Tax law Require for Charitable Contributions?

Section 170 of the Internal Revenue Code (IRC) addresses tax deductions for charitable contributions. Subsection (c) provides a broad definition of "charitable contribution" to include donations of money or property to various organizations, including:

- The federal government, a state or territorial government or any subdivision of a government, as long as "the contribution or gift is made for exclusively public purposes";
- An organization formed under U.S. federal, state or territorial law that meets the requirements of § 501(c)(3) of the IRC;
- Nonprofit organizations created in the U.S. by or for the benefit of war veterans;
- "Domestic fraternal societ[ies], order[s], or association[s], operating under the lodge system," provided the donation comes from an individual for any of the purposes identified in § 501(c)(3); and
- Certain cemetery companies.

The section identifies situations when the IRS will not allow a deduction. Section 170(f)(8) establishes a "substantiation requirement" for contributions worth $250 or more.

Donations Below $250

For a charitable contribution of less than $250, a taxpayer only needs to keep records that can provide evidence of the contribution if requested by the IRS.

Donations of $250 or More

A donor may not claim a charitable tax deduction worth $250 or more unless they submit a "contemporaneous written acknowledgment" (CWA) prepared by the donee with their tax return. The statute defines "contemporaneous" to mean the earlier of:

- The date the donor submits their tax return for the year they made the contribution; or
- The due date of the tax return for the year they made the contribution.

The CWA must include the following information:

- The amount of the donation, if in cash, or a description of the property donated without the value;
- A statement of whether the donee "provided any goods or services in consideration, in whole or in part," for the donor's contribution; and
- "A description and good faith estimate of the value of any goods or services" provided by the donee to the donor in consideration for their donation, or a statement that the donor only received "intangible religious benefits."

If, for example, a donor received a commemorative tote bag worth $8.99 in exchange for their $1,000 donation, the CWA must state this.

What Happened in *Albrecht vs. Commissioner?*

The taxpayer in the *Albrecht* case, along with her late husband, "acquired a large collection of Native American jewelry and artifacts during their marriage." She donated about 120 items from this collection to a New Mexico museum in December 2014. She and a museum representative signed a five-page "Deed of Gift" around the same time.

According to the Tax Court's decision, the first page of the Deed of Gift stated that the taxpayer was donating the items "under the terms stated in the Conditions Governing Gifts to the Wheelwright Museum of the American Indian." The second page stated these conditions, which included a stipulation that "the donation is unconditional and irrevocable…unless otherwise stated in the Gift Agreement." The remaining pages identified the items included in the donation.

The taxpayer e-filed her 2014 federal income tax return and included a copy of the Deed of Gift. The IRS notified her that it was disallowing the deduction because the Deed of Gift did not meet the requirements for a CWA found in IRC § 170(f)(8). The taxpayer requested a review by the Tax Court.

The IRS argued that it denied the deduction because the Deed of Gift "did not specify whether the Wheelwright Museum provided any goods or services in return for the donation," nor did it "state that it represented the entire agreement between the museum and [the taxpayer]." It noted that the Deed of Gift did not include the "Gift Agreement" referenced on the second page of the document and argued that the reference to a separate agreement "creat[ed] ambiguity as to whether additional terms, including donee provision of goods or services, were part of the donation."

The Tax Court stated that, when a CWA does not specify whether the taxpayer received anything from the donee, it must "look to the deed as a whole" to determine whether the taxpayer and donee exchanged anything for the donation. It agreed with the IRS's assertion that the reference to a Gift Agreement made the Deed of Gift too ambiguous to meet the CWA requirements

The court acknowledged the taxpayer's "good faith attempt…to substantially comply with the [IRC] by executing the deed," but held that it was not enough. The lesson for charitable organizations is to follow the requirements for a CWA under IRC § 170(f)(8) to the letter.