



new irs publication addressing charitable contribution substantiation and disclosure requirements

MSK Client Alert

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practice areas

nonprofit organizations

The new version of Internal Revenue Service Publication 1771, *Charitable Contributions—Substantiation and Disclosure Requirements*, emphasizes the importance of proper gift substantiation and disclosure for charitable organizations. Failure by a charitable organization to follow the rules set forth in Publication 1771 can lead to financial penalties and unhappy donors. While there is no substitute for a careful and comprehensive reading of Publication 1771, this Alert highlights some of the more important substantiation and disclosure requirements.

I. Written Acknowledgments for Contributions of \$250 or More

As a general rule, a donor cannot claim a tax deduction for any contribution of cash, a check, or other monetary gift unless the donor maintains a record of the contribution in the form of either a bank record (such as a canceled check) or a written communication from the charity (such as a receipt or letter) showing the name of the charity, the date of the contribution, and the amount of the contribution. This rule is heightened when the charitable contribution exceeds \$250. A donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a **contemporaneous, written acknowledgment** of the contribution from the recipient organization. While failing to provide a donor with a written acknowledgment for a gift of \$250 or more does not cause the organization to incur a penalty, such a failure can lead to very unhappy donors when they are unable to deduct their contributions. For the written acknowledgment to be considered contemporaneous with the contribution, a donor must receive the acknowledgment by the earlier of the date on which the donor actually files his or her individual federal income tax return for the year of the contribution or the due date (including extensions) of the return. Most charities send written acknowledgments to donors no later than January 31 of the year following the donation (a standard articulated by the IRS in Publication 1771). The written acknowledgment **MUST** contain the

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los angeles
t 310.312.2000
f 310.312.3100

new york
t 212.509.3900
f 212.509.7239

washington, dc
t 202.355.7900
f 202.355.7899



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following information:

1. The name of the organization;
2. The amount of the cash contribution;
3. A description (but not the value) of the noncash contribution (e.g., furniture or clothing);
4. A statement that no goods or services were provided by the organization in return for the contribution, if that was the case;
5. A description and good-faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution; and
6. A statement that goods or services, if any, that an organization provided in return for the contribution consisted entirely of intangible religious benefits (e.g., admission to a religious ceremony and a *de minimis* tangible benefit, such as wine used in a religious ceremony), if that was the case.

The written acknowledgment can be either a paper copy, such as a letter or postcard, or an electronic document, such as an email addressed to the donor. The Internal Revenue Service provides three examples of acceptable written acknowledgments in Publication 1771, which are:

1. "Thank you for your contribution of a used oak baby crib and matching dresser that (organization's name) received on March 15, 2010. No goods or services were provided in exchange for your contribution."
2. "Thank you for your cash contribution of \$300 that (organization's name) received on December 12, 2009. No goods or services were provided in exchange for your contribution."
3. Thank you for your cash contribution of \$350 that (organization's name) received on May 6, 2009. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of \$60."

II. Written Disclosures Required for *Quid Pro Quo* Donations Above \$75

When a donor makes a gift of \$75 or more to a charitable organization, and that donor receives either goods or services in exchange, the organization **MUST** provide a written disclosure statement to the donor. Such a donation in exchange for goods or services is called a *quid pro quo contribution* and is defined by the IRS as 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 makes a contribution of \$100 in exchange for tickets to a dinner sponsored by a charitable organization, that donor has made a *quid pro quo* contribution.

The required written disclosure statement must inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of money contributed by the donor over the value of goods or services provided by the organization. The written disclosure statement must also provide the donor with a good-faith estimate of the fair market value of the goods or services received by the donor.



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In the above dinner-for-donation example, the charitable organization would have to determine the fair market value of the dinner and then inform the donor that he or she may only deduct the difference between the \$100 donated and the value of the dinner. The organization should not, however, do the calculations for the donor. Assuming the dinner has a market value of \$60, the following would be an acceptable written disclosure statement:

"Thank you for your cash contribution of \$100 that the Charitable Organization received on [insert date here]. In exchange for your contribution, we provided you with a dinner with an estimated fair market value of \$60. The amount of your contribution that is deductible for federal income tax purposes is the difference between the money you contributed and the fair market value of the goods or services we provided."

This disclosure statement must be furnished with either the solicitation for the donation or the receipt of the *quid pro quo* contribution. In addition, the disclosure statement must be in writing and must be noticeable to the donor. The Internal Revenue Service specifically states that "disclosure in small print within a larger document might not meet this requirement."

Failing to provide a written disclosure to a donor for *quid pro quo* donations may lead to financial penalties (in addition to angry donors). The Internal Revenue Service may impose a penalty of \$10 for each nonconforming written disclosure statement for a *quid pro quo* contribution, not to exceed \$5,000 per fundraising event or mailing. An organization may avoid the penalty if it can show that the failure to meet the requirements was due to reasonable cause.

III. Exception - No Written Disclosure Required for Token *Quid Pro Quo* Donations.

A written disclosure statement does not need to include token items. Tokens are insubstantial goods that a charitable organization provides in exchange for contributions, typically small items such as pens, pins, or mugs. According to IRS guidelines for 2012, token items that do not need to be included in an organization's disclosure statement are:

1. Tokens with a fair market value that do not exceed the lesser of two (2) percent of the donation or \$99; and
2. Tokens that contain the charitable organization's name or logo and cost the organization less than \$9.90 in connection with a contribution of at least \$49.50.

As an example, if a charitable organization sends a donor a coffee mug (which costs less than \$9.90) with its logo emblazoned on the side as a "thank you" for a gift of \$100, the organization may state that no goods or services were provided in return for the contribution.

Publication 1771 may be obtained at <http://www.irs.gov/pub/irs-pdf/p1771.pdf>. Please contact any member of our Charitable Sector Practice if you have any questions concerning Publication 1771.