



## Charities Must Set Value on ‘Quid Pro Quo’ Gifts

*Donors may deduct only the amount of the payment  
in excess of the value of the goods or services received*

When somebody gives your charity a generous contribution, or pays far more than it is worth to attend the annual fundraising dinner, you want to be sure that you comply with the law and that your donors are able to claim an appropriate charitable contribution deduction.

In the early 1990’s, Congress spelled out new rules for deductions. Donors must receive a written substantiation letter from a charity for any gift of \$250 or more. Charities must determine the amount deductible if the donor makes a payment of more than \$75 in return for goods or services.

The substantiation rules apply to donors, who may not claim a charitable contribution deduction without having received the written receipt. ([See Ready Reference Page: “IRS Requires Substantiation of Contributions”](#)) The charity will not suffer a direct penalty for failing to give the receipt, although it may create a lot of unhappy donors.

The “quid pro quo” rules apply directly to charities, which can be fined \$10 by the IRS for each contribution for which they fail to make the proper disclosure, not to exceed \$5000 for any one fundraising event or mailing. (Tax Code Sec. 6714.)

The issue is one of public relations as well as law. The requirement was enacted in 1993 because Congress got fed up with the failure of charities to notify their donors of the amount which could be deducted. Therefore, it especially behooves charities to pay attention to the rules.

A quid pro quo contribution is a payment made partly as a contribution and partly in consideration for goods and services furnished to the donor. The annual fundraising dinner, where tickets are priced at various levels depending on the amount of support by the donor, is a typical example. The public radio or television on-air fundraiser, where they give a recording or a video of the show for higher level gifts, is another.

If an organization receives a quid pro quo contribution in excess of \$75, it must provide the donor a written statement of the amount deductible for federal income tax purposes. Only the amount in excess of the value of the goods or services received in return for the gift is deductible. The organization must make a “good faith estimate” of the value of such goods or services. (Tax Code Sec. 6115.)

The disclosure may be made either in connection with the solicitation or with the receipt of the contribution. It generally makes sense to give the information with both the solicitation and the receipt, when possible, and even where the payment is less than \$75.

The quid pro quo rules apply to donations of less than \$75. A donor who receives a \$20 lunch for a payment of \$50 may deduct only \$30. The charity has no legal obligation to tell the donor, but it is considered best practice to do so.

The statute specifically excludes payments to religious organizations where the donor receives “solely an intangible religious benefit that generally is not sold in a commercial transaction.” This would include “pew fees” or charges for admission to certain religious ceremonies.

The valuation question can be tricky. It is not difficult to value the commercially available recording or video. It may be more difficult to value the formal dinner dance, or a tennis lesson, or a garden tour.

The Regulations make clear, however, that it is the value of the goods or services received by the donor, and not the *cost* to the charity, that is the measure for reducing the deduction. Even if the entire dinner and all of the services of the catering facility are donated to the charity for its dinner dance, the charity must estimate the value of the event and advise the donor how much is not deductible.

By the same token, it is not the cost to the charity which is necessarily the measure of the value to the donor. If the charity is able to buy the recording for \$5, but the regular sale price in the stores is \$12, the reduction in the contribution would be \$12.

The only way the donor can avoid reducing the contribution deduction is by refusing to accept the quid pro quo benefits in advance. It is not sufficient merely to fail to attend the event. The donor must affirmatively decline to accept the ticket or otherwise advise the charity that he or she does not intend to appear.

The Regulations provide that a charity “may use any reasonable methodology in making a good faith estimate, provided it applies the methodology in good faith.” If the estimate is not in good faith, however, the IRS can impose penalties.

The IRS has issued some regulations which help eliminate some types of benefits from the calculation.

Perhaps the most significant are those goods or services which have “insubstantial value” or fall within the “low cost items” exception. For 2018 an item is considered to be of insubstantial value if it is worth less than \$109 or 2% of the gift, whichever is less. (The \$109 figure is based on an IRS guideline amount of \$50 as indexed for inflation.)

“Low cost items” typically include souvenir items including the organization’s logo, like pens, key holders, coffee mugs, or calendars. For 2018, they can be disregarded if the gift is more than \$54.50 and the cost of all the items given to the donor is less than \$10.90. (These figures are also indexed for inflation based upon guideline and statutory amounts of \$25 and \$5) The low cost items provision is one of the very few situations where the cost to the charity (rather than the value to the donor) is the measuring figure.

Also excluded are certain “membership” benefits, such as free or discounted admissions to the organization’s facilities or events, free or discounted parking, preferred access to goods or services, and discounts on the purchase of goods or services, so long as such benefits can be exercised freely during the membership period. Also excluded are events open only to members when the cost to the charity is less than the “insubstantial” amounts mentioned earlier. The Tax Code says these benefits are disregarded where the membership dues are \$75 or less but an example in the IRS Regulations disregards such benefits upon the payment of higher dues as well. The charity is not required to value such benefits for members paying higher dues.

Where a celebrity is present at an event, the Regulations say to disregard the value of the celebrity’s presence and value the event as if the celebrity were not there.

Newsletters which feature the President’s message and pictures of donors but have no “commercial value” need not be considered. If they are separately sold, carry advertising, or pay writers other than staff, they probably have commercial value which should be determined in figuring the amount by which the gift should be reduced.

Charity auctions are another area in which the charity is required to make a good faith estimate of the value of the goods or services on which the participants bid. To the extent that the bidders pay more than the fair market value of the items, they may take a deduction for the difference. To the extent that they pay only the fair value or less, they are merely purchasing the items and have no deduction.

Charities normally do not place a value of gifts of property given to them by donors but they are required to estimate the fair market value of the donated items to be sold at the auction.

Since charities regularly say thanks to their major donors, they frequently ask whether a recognition from the charity is “in consideration for” the gift and thereby forces the donor to reduce the contribution deduction. The Regulations provide that goods or services will be deemed in consideration of payment “if, at the time the taxpayer make the payment..., the taxpayer receives or expects to receive the goods or services in exchange for that payment,” even where the payment is in a year other than the year of the gift.

Therefore, if you always invite your \$1000 donors to the President’s tea after the Homecoming football game, the value of the tea would be deducted from the contribution. But if you surprise the \$1000 donors with various recognitions in some years but not others, the gift will not be reduced.