Acknowledging Charitable Donations Properly

PLUS: Keeping Your Tax-Exemption Application, Client Spotlight, Upcoming Seminar, and Ask Annie and Uyen

Proper Acknowledgment of Charitable Gift Donations

It's that time of year when charitable organizations seek to make a final push for donations before the end of the calendar year. Donors also may want to give to their favorite charities and earn a tax deduction before the end of the tax year. Since donations to a 501(c)(3) organization are generally tax deductible, a charitable organization needs to ensure that it properly acknowledges gifts from donors in compliance with the Internal Revenue Service's (IRS) requirements to help preserve donors' ability to receive a tax deduction.

Recognizing Cash Donations from a Donor

Generally, it is the responsibility of a donor to prove to the IRS that a particular charitable donation is tax deductible by maintaining proper record keeping and substantiation of charitable contributions. To fulfill this requirement, a donor needs to simply retain a bank record or communication from the charitable organization to substantiate a donation under $250.

For any single donation of $250 or more, a donor needs a written, contemporaneous acknowledgment from a charity substantiating the donation. The written acknowledgment must include the following details:

- Name of the charitable organization
- Amount of the cash contribution
- Description (not the value) of the non-cash contribution (if provided)
- A statement that no goods or services were provided by the organization in return for the contribution, if that was the case
- A description and good faith estimate of the value of goods and services, if any, that were provided in return for the contribution

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Upcoming Seminar: Launching and Sustaining a New Nonprofit

Join us on February 15, 2017 from 5:30 PM to 8:00 PM for a seminar for new nonprofits, co-sponsored by Public Counsel and the Center for Nonprofit Management (CNM).

Startups and new nonprofits face a number of planning, financial, and legal challenges from the outset. This introductory course will cover both...
Note that it is not required to include either the donor’s Social Security number or tax identification number on the written acknowledgment. Since there are no official IRS forms for the written acknowledgment, your organization may use any form or template so long as it includes the requisite information. Moreover, the acknowledgment can be provided either in paper form in the mail or via email addressed to the donor.

In addition, the written acknowledgment must be a *contemporaneous* communication, which means it was provided at the time each single contribution was made or as one annual summary letter that would substantiate each separate donation provided. Organizations typically provide the written acknowledgment by the end of the year in which the donation(s) was made (typically sent by January 31st of the year following the donation). For a written acknowledgment to be considered contemporaneous with the contribution, the donor must receive the acknowledgment by the earlier of:

- The date on which the donor actually files his/her individual federal income tax return for the year of the contribution; or
- The due date (including extensions) of the return.

Though the charitable organization does not incur a penalty for failure to provide a contemporaneous written acknowledgment to its donors, failure to provide will prevent donors from receiving a tax deduction for their donation(s); and therefore, they may be less likely to donate to the organization in the future.

To reduce the administrative burden of going through your organization's records to determine which donations were $250 or more, it is best to thank all donors in writing. It may also be best to provide one summary letter at the end of the year to each of your donors detailing the donations he/she made for the year so that the donor has the information all in one place for when he/she completes and files his/her tax returns.

**Recognizing Donations Where the Donor Receives a Gift in Return**

Oftentimes, donors may receive a gift in return (e.g., meal, gift bag, etc.) for their charitable contribution (also known as "*quid pro quo*†). In such instances, only the contribution in excess of the *fair market* value of what was received in return is deductible. For example, if a donor made a contribution of $100 to your organization and received a gift bag valued at $40, then only $60 of that contribution would be deductible by the donor.

If the amount contributed by the donor was greater than $75, then the organization is required to provide a written disclosure statement which:

- Informs 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; and
- Provides the donor with a good faith estimate of the fair market value of the goods and services he/she received.

In determining the fair market value of the goods and services received by the donor, the organization must use its best estimate of the fair market value and not just the cost to the organization. In other words, even if your organization received the goods and services for free (for example, the items in the

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† *quid pro quo*: *Latin* for something in return. In this context, it refers to the practice of exchanging goods or services for a charitable contribution.
The disclosure statement must be provided where a donor makes a contribution in excess of $75, even if the deductible amount does not exceed $75. The statement must be provided in connection with either the solicitation or the receipt of the contribution. Moreover, it must be made in writing and in a manner that is likely to come to the attention of the donor (i.e., must be easily noticeable to the donor). If the organization does not meet this written disclosure requirement, it will be assessed a penalty of $10 per contribution, not to exceed $5,000 per fundraising event or mailing (although the organization may avoid the penalty if it can show that the failure to meet the requirement was due to reasonable cause).

The requirement for a written disclosure is necessary even if the donor does not use the gift (e.g., does not attend the event, etc.), but has made the donation and purchase. The IRS has been very clear that "whether you use the tickets or other privileges has no effect on the amount you can deduct. However, if you return the ticket to the qualified organization for resale, you can deduct the entire amount you paid for the ticket." Therefore, if the donor makes a contribution in honor of the event without purchasing the ticket, then the contribution would be fully deductible by the donor. To that end, the organization should provide an option for donors to make this kind of contribution when advertising the event (e.g., providing an option to donate to the event on the website separate from purchasing tickets for the event).

Additionally, there is an exception for token gifts. Token gifts are insubstantial goods or services an organization provides in exchange for contributions that do not have to be described in the acknowledgment. The determination of what is insubstantial hinges on the payment occurring during a fundraising campaign in which the organization informs the donor of the amount of the contribution that is deductible, and:

- The fair market value of the benefits received does not exceed the lesser of two percent of the payment or $106, or
- The payment is at least $53, the only items provided bear the organization's name or logo (e.g., calendars, mugs, pins, posters, etc.), and the cost of these items is within the limit for "low-cost articles", which is $10.60.

(Note that the dollar amounts provided here are as of 2016, and may be adjusted annually for inflation. See IRS.gov for annual inflation adjustment information.)

It is best practice to list the deductible and non-deductible sums separately in a solicitation. For example, if you are holding an annual gala, the invitations should indicate that a portion of the ticket cost will go toward the dinner and would not be deductible so that it is clear to the donor what his/her tax deductible amount will be.

**Non-cash Donations**

In addition to cash donations, donors may provide a non-cash donation to an organization. In these circumstances, the acknowledgment would not provide a value, but rather a description of the gift. Moreover, it is the responsibility of the donor to determine the value. If the determined value exceeds $500, the donor will ask the organization to acknowledge the donation on a Form 8283 (available [here](#)). For items over $5,000, the donor will need to have an appraiser substantiate employment opportunities, and countless sites that require a majority of working people in the U.S. to depend on some type of communication technology as part of their daily tasks.

However, lower levels of computer ownership and internet connection are more prevalent among low income households, non-family households, disabled populations, minority populations, and households with lower levels of education, which has resulted in lower digital literacy rates in these disadvantaged communities. In efforts to close this gap, a unique organization has made it its mission to advance digital literacy while maintaining social and environmental awareness.

Public Counsel's Community Development Project (CDP) has worked with Human I-T, a nonprofit organization committed to closing the technology and digital literacy gap, while simultaneously reducing e-waste and creating jobs. Through donations received from individuals and companies, Human I-T refurbishes laptops, smartphones, tablets, and other technologies and donates them to organizations, community centers, families, and individuals. In addition to refurbishing, Human I-T provides digital literacy courses, vocational training, and technological support to its recipients, which fosters a network of support rather than just supplying a commodity.

Within its first year of being an active nonprofit, Human I-T diverted over fifteen tons of e-waste and donated technologies to 145 organizations and 137 families. In addition, over 70% of Human I-T's computers and technologies were donated directly to women. This is particularly significant since women are considerably underrepresented in fields related to science, technology, engineering, and math. By providing the necessary tools and services to its clients, Human I-T not only is creating countless opportunities for individuals, but it continues to advance its mission by forming partnerships and collaborating with the City of Los Angeles through programs such as OurCycle LA, which has distributed 2,500 computers to low-income families and LA-based nonprofits.

From its early stages as a newly formed 501(c)(3) organization, CDP has witnessed the growth and impact of Human I-T firsthand. With the help of pro bono attorneys at Morgan, Lewis & Bockius LLP, Proskauer Rose LLP, K&L Gates LLP, Manatt, Phelps and Phillips LLP, and Latham & Watkins LLP, CDP has provided Human I-T with impactful legal services such as drafting employee and volunteer manuals, reviewing organizational documents,
Furthermore, gifts of services are not deductible. For instance, a donor may want to donate free cooking lessons to contribute to an auction, but this non-cash contribution for a service will not be deductible by the donor.

In conclusion, it is important for your organization to follow the appropriate rules outlined by the IRS to ensure you are assisting your donors when they make charitable contributions. Impress your donors by providing accurate and complete acknowledgment of gift donations to streamline their own record keeping responsibilities since failure to do so may result in a donor being unable to benefit from a tax deduction.

Resources:
- IRS Publication 1771 - Charitable Contributions: Substantiation and Disclosure Requirements (available here)
- IRS Publication 526 - Charitable Contributions (available at here)
- Public Counsel, Anatomy of a Fundraiser (available here)

If you would like to update your gift acknowledgment policy or have questions about anything mentioned in this article, Public Counsel may be able to assist you if you qualify for our services. Please call 213-385-2977, ext. 200 to leave a message on our intake line.

Do We Really Need a Copy of our Tax-Exemption Application? (YES!)

Remember way back when your organization applied for and received acknowledgment of tax-exempt status from the IRS? Someone probably filled out an application (IRS Form 1023), describing the organization's programs, providing a statement of revenue and expenses, and answering questions about board governance, conflicts of interest, fundraising, and a host of other issues. Now, several years have passed, and the staff and board may have no idea where they kept a copy of this application. You might be thinking - well, does it really matter? We already are tax exempt!

Well, it does matter - all 501(c)(3) organizations are required to make available for public inspection their exemption application, determination letter, and annual returns (e.g., Form 990 or 990-EZ). That means that if someone walks into a nonprofit's office and demands a copy of the 1023 application, the nonprofit must hand over a copy. The organization may, however, charge reasonable copying and actual postage costs before providing a copy. Unlike annual returns which are generally available online at Guidestar.com, a copy of a 1023 application is not. That's why having a copy can be important for several reasons:

1. Verification: If someone wants to verify the nonprofit's tax-exempt status, they can do so by inspecting the copy of the 1023 application. This can be important for donors, grant seekers, and other stakeholders.
2. Accountability: Having a copy of the application can help the organization demonstrate its accountability to its donors, funders, and other stakeholders.
3. Legal Protection: In the event of a dispute or legal challenge, having a copy of the application can provide evidence of the organization's compliance with IRS rules.

Legal Services for Nonprofits

The Community Development Project builds strong foundations for healthy, vibrant and economically stable communities by providing comprehensive legal and capacity building services to organizations serving people with lower-incomes in the Los Angeles area.

If your organization needs legal assistance, please call (213) 385-2977, ext. 200 or email cdp@publiccounsel.org

CDP eNewsletter Archive

Have you recently joined our mailing list and feel like you’ve been missing out on great information? If so, we have good news! Previous issues of the CDP eNewsletter are available on our website.
must be specifically requested from the nonprofit or the IRS. Therefore, it is important that a nonprofit has a copy of its 1023 readily available so it can comply with the public inspection requirements.

In addition to being legally required, there are also other reasons why it is helpful for a nonprofit to have a copy of its exemption application readily available. The narrative description of the organization's programs in the 1023 application provides the basis for its tax-exempt status and should be consulted periodically. If an organization begins providing any new significant program services, or ceases conducting services, or makes significant changes to the way it conducts an existing program or service, it has to notify the IRS on its next annual filing. A nonprofit must review its 1023 application (especially the narrative description of programs) in order to assess whether the new or changed program falls outside of what was described in its 1023 and therefore must be reported on the next annual filing.

Additionally, if a nonprofit loses its IRS tax exemption and wishes to have it reinstated, it must reapply for tax-exempt status by submitting a new 1023 application (unless the nonprofit is eligible to reapply with the Form 1023-EZ). It is significantly easier to complete a new 1023 application if the preparer can consult the original 1023 application, especially if there have been no significant changes to programs since the time the application was originally filed.

An organization can obtain a copy of its 1023 application by submitting IRS Form 4506A, which is available here. In Line 5, which asks for a reason for the request, simply write “we need a copy of the Form 1023 for the organization's permanent file.” Check off the box next to "Form 1023" in Line 9 (as well as any other documents the organization needs). The instructions to Form 4506A, available here, have information on copying costs and where to send the form.

If your organization is having a hard time deciding which organizational records to keep and for how long, it should review its records management and retention policy or, if it does not have one yet, create one. Public Counsel has a model annotated Records Management and Retention Policy for 501(c)(3) organizations available here.
Dear Annie and Uyen,

Our nonprofit organization supports youth mentorship and arts activism in Los Angeles by providing free poetry workshops to students in K-12 education. We have a website and actively manage a weekly blog where we post poems submitted by past workshop participants. We have been copying photographs from the Internet to display along with these poems. Can these actions potentially subject us to liability for copyright infringement?

Yours,

Los Angeles Youth Poet Society

Can I legally copy a photograph from the Internet for use on our website?

Not with certainty. For many users, it is routine to simply download a photo from the Internet and use it for professional or private reasons. If the photograph is within the public domain, then you are free to use it without obtaining permission (as discussed below). The concern is that if the photo qualifies for copyright protection, using it requires securing the author's permission. Copyright infringement occurs when someone other than the copyright holder uses the work in a way that violates the exclusive rights held by the copyright holder. The exclusive rights that are most commonly infringed are copying or reproducing and distributing a copyrighted work. In order to use a copyrighted work without infringing, the user must either have permission from the copyright holder, or the use must fall within one of the limitations or exceptions to the copyright holder's exclusive rights, such as fair use.

Whether the photo has copyright protection depends on many facts (that may not be known to you), including when it was first published, whether the copyright has been renewed, if necessary, because it was published before 1978, and whether the copyright owner intended to dedicate the work to the public domain. Therefore, it is generally best practice to take the steps to track down the author of the material (or at least put in a good faith effort to do so) and ask for permission to use the work.

What does it mean for a work to be "in the public domain?"

The term "public domain" refers to creative materials, such as books, songs, movies, artwork or other works that are not currently protected by copyright law (or trademark, patent, or other intellectual property law). Works in the public domain are free to use without obtaining permission. Because United States copyright protection is not indefinite in duration, the work is entered into the public domain for anyone to use when copyright protection ends. The public now owns these works, not an individual author or artist. No one can ever claim ownership of a work in the public domain or prevent others from using it.

If a work is publicly accessible, like on a website, does that mean it is in the "public domain"?

No. The public availability of a work online does not mean that it is in the public domain, and therefore available for use by all.
The term "public domain" is a legal term that refers specifically to whether a work continues to receive copyright protection. In the same way that a physical book in a library or a photograph in a magazine can be copyright-protected, any work available on the Internet can be copyright-protected as well.

Are there any exceptions to copyright protection?

One limited exception to copyright protection is called the "fair use" doctrine, which serves as a defense against a claim of copyright infringement. Fair use is a right to use copyrighted material under certain circumstances without the consent of the author or owner of the copyright. This exception is rooted in the belief that the public is free to use copyrighted materials for certain purposes including: commentary, criticism, education, parody, scholarship, or informing the public.

The defense of fair use asks a court to excuse the unauthorized use of a copyrighted work because it advances greater social benefits. Whether a fair use exception is granted depends on a court's evaluation of four factors:

1. the purpose and character of the use;
2. the nature of the copyrighted work;
3. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
4. the effect of the use upon the potential market for the copyrighted work.

These factors are only guidelines, and courts are free to adapt them to particular situations on a case-by-case basis. A judge has a lot of freedom when making this determination so the outcome of a copyright infringement case with a fair use defense can be difficult to predict.

In seeking to use a copyrighted work under the fair use exception, ask yourself: Could my use of this copyrighted work potentially affect the sales of this work? If so, it is likely not a fair use. Because disputes are resolved on a case-by-case basis, it can be difficult to predict the outcome of a copyright infringement case with a fair use defense. As a result, it is better to track down the author and get his or her permission before using the copyrighted work.

For any additional questions you may have on copyright, fair use, and related topics, please see our publication Copyright & Fair Use Basics for Nonprofits or contact Public Counsel.

Very Truly Yours,

Annie and Uyen