UT LAW CLE THE UNIVERSITY OF TEXAS SCHOOL OF LAW

Presented:
2019 Higher Education Taxation Institute

June 2, 2019
Austin, TX

Charitable Contributions

Joseph R. Irvine
Sean P. Scally

TABLE OF CONTENTS

Page

I. OVERVIEW 1

A. What is a Charitable Contribution? 1

B. *Quid Pro Quo* Transactions 2

C. Charitable Contribution or Business Expense? 2

D. Reversionary Interest or Retained Rights 3

E. Earmarked Gifts 5

F. Deductions Permitted for Contributed Property 6

III. RECEIPTS – "SUBSTANTIATION" BY "WRITTEN ACKNOWLEDGEMENT" 7

A. Gifts of Cash, Checks or Other Monetary Gifts 7

B. Noncash Charitable Contributions of Less than $250 7

C. Quid Pro Quo Donations 8

D. Gifts of $250 or More 8

E. Goods or Services Disregarded 15

F. Date of Contributions 17

IV. APPLICATION OF THE SUBSTANTIATION REQUIREMENTS AND DEDUCTION RULES FOR SPECIFIC TYPES OF CONTRIBUTIONS 20

A. Contributions Made by Payroll Deduction 20

B. Distributing Organizations as Donees 20

C. Transfers to Certain Trusts 20

D. Payments to a College or University for the Right to Purchase Tickets to Athletic Events 21

E. Annuities Purchased from a Charitable Organization 21

F. Matched Payments 21

G. Donations of Services 22
H. Tangible Personal Property 22
I. Clothing and Household Items 23
J. Fractional Gifts 23
K. Taxidermy 23
L. Auctions 24
M. Raffles 24
N. Internet Solicitation 25
O. Charitable Contributions of Automobiles, Boats, Airplanes 25
P. Contributions of Patents and Similar Property 27
Q. Qualified Conservation Contributions 27
R. Reporting Requirements for Non-Cash Property Contributions 28
V. APPRAISALS 28
A. In General 28
B. Property Excluded 29
C. Information Required 30
D. Appraisal Summary 31
E. Qualified Appraisers 33
F. Payment for Appraisals 34
G. Penalties 35
H. Valuation and Appraisal Substantiation Issues 35
VI. TAX FORMS 40
A. IRS Form 8283 40
B. IRS Form 8282 41
EXHIBIT A A-1

GIFT RECEIPT A-1

EXHIBIT B B-1

GIFT RECEIPT B-1

EXHIBIT C C-1

GIFT RECEIPT C-1

EXHIBIT D D-1

GIFT RECEIPT D-1

I. Overview

A. What is a Charitable Contribution?

1. Section 170 of the U.S. Internal Revenue Code of 1986, as amended (hereinafter referred to as "IRC") provides that an income tax deduction can be taken for any charitable contribution that is made within the taxable year.

2. IRC § 170(c) defines a charitable contribution as a gift or contribution made to or for the use of a qualified charitable organization.

3. The following quote from Sklar v. Comm'r, 125 T.C. 281 (2005) provides the basic definition of a charitable contribution:

> In United States v. Am. Bar Endowment, *supra*, at 118 the Supreme Court said:
>
> The *sine qua non* of a charitable contribution is a transfer of money or property without adequate consideration. The taxpayer, therefore, must at a minimum demonstrate that he purposely contributed money or property in excess of the value of any benefit he received in return . . .
>
> A taxpayer may not deduct a payment as a charitable contribution if the taxpayer receives a substantial benefit for a payment to a charitable organization. *Id*. at 116-117; Ottawa Silica Co. v. United States, 699 F.2d 1124, 1131 (Fed. Cir. 1983); Singer Co. v. United States, 196 Ct. Cl. 90, 449 F.2d 413, 420, 422 (1971); S. Rept. 1622, 83d Cong., 2d Sess. 196 (1954). If the size of a taxpayer's payment to a charity is clearly out of proportion to the benefit received, the taxpayer may claim a charitable contribution equal to the difference between a payment to the charitable organization and the market value of the benefit received in return on the theory that the payment has the "dual character" of a purchase and a contribution. United States v. Am. Bar Endowment, at 117. To be deductible, a charitable contribution must be a gift; i.*e.*, a transfer of property without adequate consideration. Sec. 170(c); United States v. Am. Bar Endowment, *supra* at 118; Sklar v. Comm'r, *supra* at 612.

4. In Kaplan v. Comm'r, T.C. Memo. 2006-16 (2006), the Tax Court stated that the following essential elements of a valid *inter vivos* gift must be present to qualify as a charitable contribution:

> (1) a donor competent to make the gift; (2) a donee capable of taking the gift; (3) a clear and unmistakable intention on the part of the donor to absolutely and irrevocably divest himself of the title, dominion, and control of the subject matter of the gift, *in praesenti*; (4) the irrevocable transfer of the present legal title and of the dominion and control of the entire gift to the donee, so that the donor can exercise no further act of dominion or control over it; (5) a delivery by the donor to the donee of the

subject of the gift or of the most effectual means of commanding the dominion of it; (6) acceptance of the gift by the donee …

Guest v. Comm'r, 77 T.C. 9, 15-16 (1981) (quoting Weil v. Comm'r, 31 B.T.A. 899, 906 (1934), aff'd, 82 F.2d 561 (5th Cir. 1936)).

B. *Quid Pro Quo* Transactions

1. When a donor receives a privilege or benefit in return for a contribution, the presumption is that the payment is not a gift. The donor has the burden of proving that the payment is not the equivalent of the benefit's purchase price and that part of the payment qualifies as a contribution. *See* Rev. Rul. 67-246.

2. Charities (except government entities described in IRC § 170(c)(1)) are required to provide a written statement to donors who make *quid pro quo* contributions in excess of $75. The statement must inform the donor that the allowable tax deduction for the contribution is limited to the excess of the contribution over the value of goods or services provided by the charity. The statement must also provide a good faith estimate of the value of these goods or services. *See* IRC § 6115.

3. A payment for admission to an event is not deductible even if the charity uses the entire proceeds or if the taxpayer does not attend the event. However, a donor who properly rejects a charity-offered benefit may claim a deduction for the full amount of the gift. *See* Rev. Rul. 67-246.

4. A deduction for the cost of raffle tickets purchased from a charitable organization is disallowed on the ground that the chance received is full consideration for the payment. *See* Rev. Rul. 83-130.

5. In Pollard v. Comm'r, T.C. Memo. 2013-38 (Feb. 6, 2013), the taxpayer sold a conservation easement on his land to the county government in a bargain sale. As a part of the transaction, the taxpayer received a subdivision exemption. The county had required that taxpayer grant the county the conservation easement as a condition for granting taxpayer the subdivision exemption. The Tax Court held this to be a *quid pro quo* transaction, not a charitable contribution, and denied taxpayer's deduction.

C. Charitable Contribution or Business Expense?

1. No deduction is allowed as a business expense for any contribution or gift which would be allowable as a deduction under IRC § 170 were it not for the percentage limitations or the requirements as to time of payment. This provision applies both to individuals and corporations. *See* IRC § 162(b).

2. A business expense deduction is allowable if the payment is made with a reasonable expectation of a financial return commensurate with the amount of the donation. *See* Treas. Reg. § 1.162-15(b); Rev. Rul. 54-3.

UT LAW CLE THE UNIVERSITY OF TEXAS TEXASLAW

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the UT Law CLE eLibrary (utcle.org/elibrary)

Title search: Charitable Contributions

Also available as part of the eCourse
2019 Higher Education Taxation Essentials eConference

First appeared as part of the conference materials for the
2019 Higher Education Taxation Essentials session
"Charitable Contributions"