

EXCEEDING THE VALUE: DEDUCTIBLE CONTRIBUTIONS TO MUSEUMS

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Donations to a 501(c)(3) charity are deductible only to the extent the amount of the contribution exceeds the value of any goods or services received in exchange. Proposed Internal Revenue Service Regulations released August 3, 1995 provide some needed guidance on the documentation a charity must provide so that donors can deduct their contributions.

For example, the museum holds a fund raising auction at which an individual pays \$35.00 for a dinner for two worth \$50.00. There is no tax deductible contribution. However, if the individual paid \$65.00 for the dinner, there would be a tax deductible contribution of \$15.00, i.e. the amount exceeding the value of what was received in exchange.

Contributions of \$250 or More.

In order to deduct any part of a contribution of \$250.00 or more the donor must obtain a “contemporaneous written acknowledgement” from the charity which must state:

- the amount of any cash and a description (but not the value) of any property donated to the charity.
- whether or not the charity provided any goods or services in exchange and, if so, a good faith estimate of the value of such goods or services.

To be “contemporaneous” the written acknowledgement must be obtained by the donor by the earlier of (i) the date the donor files a tax return for the year in which the donation was made (e.g., returns filed before April 15th), or (ii) the date (including extensions) the return is due. Technically it is the donor’s responsibility to secure this acknowledgment. However, in the interest of happy donors, museums are advised to comply.

Quid Pro Quo Contributions of \$75 or More.

A “quid pro quo” contribution is one in which the donor receives something in exchange for the contribution. A charity that receives a contribution of more than \$75.00 and gives something in return must provide written acknowledgement to the donor including:

- A statement that the donor may deduct only the amount of the contribution in excess of the value of the goods or services received; and
- A good faith estimate of the value of the goods or services provided to the donor.

There are penalties for failure to provide such a written acknowledgment.

Memberships.

The value of membership benefits has been a troublesome area for museums, e.g., the value of free admissions and of discounts at the museum gift shop. The proposed regulation gives some welcome guidance in this area.

Charities and donors are currently allowed to ignore certain low cost goods and services, \$6.60 or less for 1995, e.g., the traditional coffee mug. Newsletters “not of commercial quality” may also be disregarded. Under the proposed regulations annual membership benefits for payments (donations) of \$75.00 or less may be disregarded under two circumstances. First, privileges that the donor may exercise during the membership period such as free or discounted admissions, parking, preferred access to goods and services and discounts at the museum gift shop may be disregarded. Second, admission to events open to members only may also be disregarded, provided the charity reasonably estimates the cost per person (excluding any applicable overhead) to be less than the limit established for low cost articles, i.e., \$6.60 or less for 1995).

In organizations with more than one class of members, these same kinds of benefits may also be

disregarded for members paying more than \$75.00 provided the same benefits are also provided to members paying \$75.00 or less. The value of additional benefits provided to members paying more than \$75.00 must be provided to the donor as discussed above. For example, the ABC Museum has two classes of members, sponsors and patrons, paying \$50 and \$100 respectively. All members get free admissions, free parking and a 15% discount at the museum store. In addition patrons receive a copy of an historic photograph worth \$10. Sponsors may deduct the full \$50 for their membership contribution. Patrons may deduct \$90 of their \$100 membership. In both cases the free admission, free parking and the discount at the store are disregarded. However, if only the patron class got free parking, the value of that benefit would have to be estimated and the patrons' deductible contribution reduced by that amount.

It is suggested that museums review their membership benefits and, whenever possible, tailor them to fit the rules so that the benefits provided to members may be disregarded to the maximum extent possible.

"Good faith estimates" of the value of goods or services provided in exchange for contributions must be provided for any contribution over \$75.

Out of Pocket Expenses of Donors or Volunteers

Unreimbursed out of pocket expenses incurred by volunteers or donors on behalf of a charity are tax deductible as a charitable deduction (e.g., a board member's travel to a conference as the museum's representative). However, if the donor is advising in his or own area of expertise, e.g., lawyer, accountant, architect, etc., such expense may be deducted as a business expense. The problem has been that the charity may not be aware of the expense and therefore unable to provide substantiation if the amount is more than \$250.

Under the proposed regulations the donor or volunteer may substantiate the expense by his or her normal records and by an abbreviated written acknowledgement from the charity. The acknowledgement must contain (i) a description of the services provided, (ii) the date provided, (iii) whether or not the charity provided any goods or services in return, and, if so, a description and good faith estimate of their value.

These regulations are currently in proposed form and may be significantly revised before they are finalized. Taxpayers may rely on the proposed regulations for charitable contributions made on and after January 1, 1995.

Deductibility of Personal Automobile Expense.

Volunteers can deduct unreimbursed out of pocket car expenses, such as the cost of gas and oil, that are directly related to the use of the volunteer's car in giving services to a charitable organization. If the volunteer does not want to deduct actual expenses the standard rate may be used (12 cents a mile for 1994). If the services provided by the volunteer are in the volunteer's field of expertise (e.g., lawyers or accountants), the volunteer's car expenses may be deducted as a business expense.¹(29 cents a mile in 1994).

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¹ IRS Letter Ruling 8727045