

May 21, 2012

TO: Clients and Friends of the Firm

RE: **IRS and Tax Court are Strictly Enforcing “Acknowledgement Letter” Rules**

A charitable couple lost their tax deduction for gifts of approximately \$25,000 to their church simply because the church’s acknowledgement letter was deficient. When the church provided a corrected letter two years later, it was too late. *David P. Durden, et ux. v. Commissioner*, TC Memo 2012-140 (May 17, 2012).

What Happened to the Donors?

The couple made the gifts to their church in 2007. They received a letter from the church acknowledging the contributions, but it did not contain the required language about “no goods or services” being provided.

The couple’s 2007 return was audited in 2009, and the IRS disallowed the deduction, even though the taxpayers were able to provide cancelled checks as proof of the donations and a new letter from the church with the correct language.

On appeal to the Tax Court, the Court agreed with the IRS. The cancelled checks were proof of the donations, but the donations must be supported by a “contemporaneous” acknowledgment letter from the charity. The subsequent letter from the church was not contemporaneous.

For donations of money exceeding \$250, the donee's written acknowledgment must state the amount contributed, indicate whether the donee organization provided any goods or services in consideration for the contribution, and provide a description and good faith estimate of the value of any goods or services provided by the donee organization. I.R.C. § 170(f)(8)(B); Treas. Reg. § 1.170A-13(f)(2). A written acknowledgment is contemporaneous if it is obtained by the taxpayer on or before the earlier of: (1) the date the taxpayer files the original return for the taxable year of the contribution or (2) the due date (including extensions) for filing the original return for the year. IRC § 170(f)(8)(C); Treas. Reg. § 1.170A-13(f)(3).

What Lessons can we Draw from this Sad Case?

- 1) Individual and corporate donors** should be vigilant, to ensure that each donation is matched up each year with an acknowledgement letter containing the “no goods or services” language (or language stating the value of the goods or services provided).

- a. Check for the required letters **at the time you prepare your tax return.**
You cannot wait to cure the deficiency when you are audited!
- 2) Even **private foundations** should follow this practice. Private foundations must maintain “adequate records or other sufficient evidence” of qualifying distributions to charities, and IRS auditors may well apply the acknowledgement letter rule to verify “qualifying distributions.”
- 3) For **charities**, the lesson is obvious: If you don’t send your donors contemporaneous acknowledgment letters that satisfy the IRS regulations, you might not be long for this world. This might be a good time to review your acknowledgement practices for compliance with IRS regulations.

We hope this information is helpful. For more information, please contact:

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