

April 2019

## Private Foundations Bulletin

# Saying “Thank You” Has Never Been More Important

## *Substantiation Requirements for Charitable Contributions*

The Internal Revenue Service (IRS) issued definitive final regulations in July 2018 that enacted changes to the substantiation and reporting requirements for charitable contributions and are effective beginning July 30, 2018. These final regulations reflect provisions contained in the American Jobs Creation Act of 2014 and the Pension Protection Act of 2006 and set forth the substantiation requirements for cash contributions of varying dollar amounts and for donations of property.

Before a tax deduction (for individuals, corporations, etc.) may be claimed for a charitable contribution (contributions, gifts, grants, etc.), IRS regulations require that the donor have a “bank record” or a written communication [“thank you” letter, or more formally known as a contemporaneous written acknowledgement (CWA)]. For private foundations that continue to receive charitable contributions, it has never been more important to send donors a “thank you” acknowledgment.

Private foundation managers should be aware of the donor acknowledgement requirements when receiving contributions to ensure that the foundation and its donors are in compliance with the substantiation requirements in the event the foundation or its donors are subject to an IRS audit.

It is also important to note that under the Tax Cuts and Jobs Act of 2017 certain exceptions to the substantiation rules were repealed. One such repealed exception exempts donors from written substantiation if the donee (the foundation) filed a return with similar information.

The following briefly outlines the substantiation requirements.

### Cash Contributions

The most common of all charitable contributions that a private foundation will receive is a cash contribution. In order to claim a cash contribution, the donor must maintain a bank record or other written acknowledgement (email is acceptable) from the donee (the foundation) showing the following:

- Name of donee (the foundation);
- Date of the contribution;
- Amount of the contribution; **and**
- Statement that no goods or services were provided by the organization in return for the contribution; **or**
- Description and good faith estimate of the value of goods or services, if any, that an organization provided in return for the contribution

The donor must obtain the bank record or written communication on or before the earlier of the:

- Date the donor files the original return for the taxable year in which the contribution was made; **or**
- Due date, including extensions, for filing the return.

A bank record is defined by the IRS as follows:

- Statement from a financial institution;
- Electronic fund transfer receipt;
- Cancelled check;
- Scanned image of both sides of a cancelled check obtained from a bank website; **or**
- Credit card statement.

A donor making a cash charitable contribution of \$250 or more must substantiate the contribution with a CWA from the donee (the foundation) which must include:

- Amount of cash; **and**
- Statement of whether the donee (the foundation) organization provided any goods or services in consideration for the cash.

### Non-Cash Contributions

Non-cash contributions require a donor to maintain concrete substantiation support showing the following information:

- Name and address of donee (the foundation);
- Date of the contribution; **and**
- Description of the property in sufficient detail under the circumstances (considering the value of the property) for a person who is not generally familiar with the type of property but will be able to ascertain that the described property is the contributed property.

For instances in which a receipt cannot be obtained, the written record must include the following:

- Information required on the donee (the foundation) receipt as indicated above;
- Fair market value of the property on the date the contribution was made; **and**
- Method used to determine the fair market value.

For private foundations that receive contributions in the form of donated securities, the following information should be maintained in order to substantiate the contribution:

- Name of the issuer;
- Type of security; **and**
- Whether the securities are publicly traded.

Non-cash contributions — as noted below — require the following supporting documentation to be maintained in order to substantiate the contribution received.

Contributions of most types of property for which a deduction of:

**1. Greater than \$500 is claimed**

- a. Contemporaneous written acknowledgement (CWA); **and**
- b. IRS Form 8323 (Section A)

**2. Greater than \$5,000 is claimed**

- a. Contemporaneous written acknowledgement (CWA);
- b. IRS Form 8323 (Sections A and B); **and**
- c. Qualified appraisal for donated property.

### 3. Greater than \$500,000 is claimed

- a. Contemporaneous written acknowledgement (CWA);
- b. IRS Form 8323 (Sections A and B);
- c. Qualified appraisal for donated property; **and**
- d. Qualified appraisal must be attached to the tax return.

#### Penalty

A penalty is imposed on charities that do not meet the written disclosure requirement. The penalty is \$10 per contribution, not to exceed \$5,000 per fundraising event or mailing. An organization may avoid the penalty if it can show that failure to meet the requirements was due to reasonable cause.

#### Conclusion

Private foundations should become familiar with the substantiation requirements as noted above and keep them in mind when receiving contributions from its donors. As a private foundation, it is necessary to provide and maintain the necessary substantiation support in the event the IRS questions a contribution and to ensure that the foundation and its donors are in compliance.

#### Contact Us

We welcome the opportunity to speak with you about any questions you may have regarding this newsletter or any other subject related to accounting, audit, tax or advisory matters relative to private foundations. Please contact us:

**Thomas F. Blaney**, CPA, CFE  
Partner, Co-Director of Foundation Services  
[tblaney@pkfod.com](mailto:tblaney@pkfod.com)

**Christopher D. Petermann**, CPA  
Partner, Co-Director of Foundation Services  
[cpetermann@pkfod.com](mailto:cpetermann@pkfod.com)

[www.pkfod.com](http://www.pkfod.com)

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