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Tax Notes

Charitable Contribution Substantiation Requirements

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It is not uncommon for family offices and individual tax clients to create best practices related to various types of tax preparation support and document retention. As year-end approaches and taxpayers consider year-end tax strategies, it is of equal importance for a taxpayer to understand the substantiation requirements for cash and noncash charitable contributions.

On July 27, 2018, the Treasury issued final income regulations reflecting amendments that were made to IRC Sec. 170 by both the American Jobs Creation Act of 2004 and the Pension Protection Act of 2006. If not adhered to, these substantiation requirements can lead to lost or disallowed deductions. In this article, we will summarize the substantiation rules and recordkeeping requirements to ensure that proper support exists for any deductions taken.

2018 Final Income Tax Regulations (Reg. Sec. 1.170A)

In general, the final income tax regulations indicate that a deduction is not allowed for a charitable contribution made by cash or check unless the deduction is substantiated with a bank record or written communication (e.g., an e-mail) which reflects the name of the recipient, the date and amount of contribution. The regulations define a statement from a financial institution ("bank record") as an electronic fund transfer receipt, cancelled check, and scanned check images from a bank website or a credit card statement.

Cash Contributions

Cash contributions of $250 or more will require additional substantiation which includes the donor receiving a "contemporaneous written acknowledgment" or maintaining a receipt from the charitable organization. The acknowledgment letter must provide (1) the amount of cash paid to the organization, (2) a statement of whether the charitable organization provided any goods or services, and (3) a description and estimate of the value of the services, if any provided.

Donation of Property

Additional substantiation requirements exist for noncash contributions including:

- Noncash or property donations under $250 require the donor to obtain a receipt from the donee or keep reliable records.
- Property donations of at least $250 – but not more than $500 – require a contemporaneous written acknowledgment be obtained.
- Property donations of more than $500 – but less than $5,000 – require the donor to obtain a contemporaneous written acknowledgment <u>and</u> file a completed Form 8283 (Section A), Noncash Charitable Contributions.

- Property donations in excess of $5,000 require a contemporaneous written acknowledgment from the charity, a qualified appraisal prepared by a qualified appraiser, and completion of Section B of Form 8283. There are certain types of property for which a qualified appraisal is not needed (e.g., donation of appreciated stock).
- Property contributions of $500,000 or more require a donor to meet the requirements for a contribution of $5,000 or more (above) and attach a qualified appraisal to his or her return.

Recent Cases

There have been a couple of cases which have addressed the importance of the substantiation requirements including:

- In *RERI Holdings, LLCI v. Comm'r* (7/3/17*)*: Form 8283 failed to disclose the basis of the property contributed to charity, and a $33 million contribution deduction was completely disallowed as the substantiation requirements were not met.
- In *15 West 17th Street LLC v. Comm'r* (12/22/16*)*: the IRS disallowed a $64 million deduction of a façade easement ruling that the taxpayer failed to obtain contemporaneous written acknowledgment from the charity.

Takeaways

The importance of the substantiation rules cannot be understated. Careful attention to detail must be taken to preserve cash and noncash contribution deductions. Putting the proper best practice in place is critical so that procedures are followed and deductions are retained. Complete and accurate appraisals are equally as important to receive. Care must be taken when selecting qualified appraisers as these individuals must meet the IRS standards.

Contact Us

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