

# Philanthropic Estate Planning

By Janet Nava Bandera

## Get Exempt—Stay Exempt, Part II: Disclosure and Substantiation Documents

In return for being tax-exempt and receiving tax-deductible contributions, Congress requires 501(c)(3) organizations to disclose information about the organization to donors and to the public at large. In this column, we will cover what must be disclosed, to whom and when, and the penalties for failure to comply.

### Document Disclosure

The following documents must be made available to the public:

- The organization's annual tax return filing (Form 990, 990-EZ, 990-PF or 990-T filed after August 17, 2006) for three years after the due date, including any extensions
- All Form 990 schedules (except Schedule B—see *below*), attachments and supporting documents
- Application for Exemption (Form 1023) and all supporting documents, if the organization filed the form on or after July 15, 1987
- The Determination Letter from the IRS ruling that the organization has tax-exempt status

Certain documents including the following need not be made available to the public:

- Schedule B of Form 990/990-EZ which contains the names of contributors (the organization is only required to disclose amounts and the nature of the contribution)
- Unfavorable rulings such as earlier denials of tax exempt status
- Certain types of information that the IRS approved withholding including trade secrets, patents, processes, styles of work and national defense material

Generally, documents on the must-be-disclosed list must be provided to a requestor on the same day. However, if an organization has no office or



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has limited hours during certain times of the year, the requested information should be made available within two weeks. If copies are requested, the organization may impose a reasonable charge to cover the cost of copying. If the information is posted to the organization's Web site, the requester can be referred to the Web site. However, paper copies must still be available for anyone who wants to inspect but does not want to make copies.

If the organization fails to comply, there is a fine of \$20 for each day of noncompliance, up to a maximum of \$10,000. If the failure to comply is the willful act of an officer, director or employee, such person could face a penalty of \$5,000 per application.

## Disclosures and Documentation Regarding Donations

If the donor does not receive something in return for his or her contribution of less than \$250 (a non-*quid pro quo* donation), a disclosure statement is not required. However, a donor cannot claim a tax deduction for any contribution unless he or she maintains a record of the contribution in the form of either a bank record (such as a canceled check) or a written communication from the charity showing the name of the charity, the date of the contribution and the amount of the contribution.

For a single contribution of \$250 or more, the donor must obtain a written acknowledgment from the organization to claim a tax deduction. Although it is the donor's responsibility to obtain a written acknowledgment, the organization can assist the donor by providing a timely written statement. "Timely" typically means no later than January 31 of the year following the donation. That's because donors must receive the acknowledgment by the earlier of (1) the date on which the donor files his or her individual federal tax returns for the year of the contribution; or (2) the due date of the return (including extensions). The acknowledgment must contain the following information:

- Name of the organization
- Date of the contribution
- Amount of any cash contribution
- Description (but not value) of noncash contribution
- Statement that no goods or services were provided by the organization in return for the contribution, if that was the case
- Description and good-faith estimate of the value

of goods or services, if any, that an organization provided in return for the contribution

- Statement that goods or services, if any, that an organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case

The deduction for *quid pro quo* donations (a donation for which the donor receives something in return) is limited to the amount contributed above the amount of the goods or services received. The organization's written statements disclosing the value of the benefit received must capture the attention of donors. No fine print! There is a penalty for failure to provide the disclosure of \$10 per contribution, up to \$5,000 per fundraising event or mailing.

No disclosure statement is required in the following situations:

- The goods or services given to a donor meet the standards for *insubstantial value* set out in Rev. Proc. 90-12<sup>1</sup> and Rev. Proc. 92-49<sup>2</sup> (as updated). Generally, goods and services are considered insubstantial tokens if these three things are true:
  1. The donor gave at least \$43.
  2. The item bears the organization's name or logo (think calendars, mugs or posters).
  3. The item does not cost more than \$8.60 (these dollar amounts are for 2006; guideline amounts are adjusted for inflation).

Certain Membership Benefits are also considered insubstantial:

- Free or discounted admissions to the organization's facilities or events
- Discounts on purchases from the organization's gift shop
- Free or discounted parking
- There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop).
- There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes and must be of a type that generally is not sold in a commercial transaction outside the donative context.

The written statement regarding a *quid pro quo* donation must (1) provide the donor with a good-faith estimate of the fair market value of the goods or services; and (2) tell the donor that he or she can only

claim the contribution amount that exceeds the fair market value of the goods or services provided.

What about un-reimbursed expenses? If a donor makes a single contribution of \$250 or more in the form of un-reimbursed expenses, such as out-of-pocket transportation expenses to speak at a conference an organization sponsored, the organization must send the donor a written acknowledgment letter, and the donor should keep good records of the expenses. The acknowledgement provided by the organization should include the following:

- A description of the services provided by the donor
- If goods or services were provided in return for the contribution, a description and good-faith estimate of the value of those goods or services
- A statement that goods or services that the organization provided in return for the contribution consisted entirely of intangible religious benefits, if that was the case
- Why comply? You guessed it! There are penalties for any organization that intentionally disregards a disclosure requirement. The penalty is the greater of \$1,000 for each day the failure occurred or 50 percent of the total cost of all solicitations that

were made by the organization the same day that it failed to meet the requirement

## Miscellaneous Disclosures

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If the organization offers to sell goods or services that are available free from the federal government, this must be disclosed in a conspicuous and easily recognizable format.

## Conclusion

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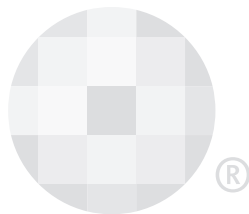
This quick easy read just taught you which records are open to public inspection; when and how to tell donors the fair market value of the goods or services the charity is providing in exchange for their contributions; and how to provide donors with written acknowledgments of their contributions so they will donate again. For more details, you can review Code Sec. 6115 and Publication 4421 (Compliance Guide for Tax Exempt Organizations) available at [www.irs.gov](http://www.irs.gov).

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### ENDNOTES

<sup>1</sup> Rev. Proc. 90-12, 1990-1 CB 471.

<sup>2</sup> Rev. Proc. 92-49, 1992-1 CB 987.



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