



Tax-Exempt Organizations Alert: **Reporting Requirements for Non-Cash** **Charitable Donations under the New Form 990**

Introduction

In an attempt to improve compliance with the regulations surrounding charitable contributions, the IRS has released a new Form 990, the annual information return filed by public charities and other tax-exempt organizations. While the new Form 990 does not modify the existing legal obligations of tax-exempt organizations regarding non-cash contributions, it does modify and highlight the reporting requirements for these contributions.

Among other things, the IRS hopes that these modifications will allow it to better track data, as well as reduce the amount of follow-up correspondence that is often required regarding donations to tax-exempt organizations.

This Alert briefly sets out the current obligations placed upon an organization that is exempt under Section 501(c)(3) when it receives common non-cash contributions, such as clothing, household items, stock, or vehicles. It includes a discussion of:

- Form 8283 (donor's declaration of non-cash charitable contributions that may require a donee's acknowledgement and signature),
- Form 8282 (donee information return to be filed upon the sale, exchange,

or other disposition of donated property), and

- Form 1098-C (acknowledgement required when receiving contributions of motor vehicles, boats, and airplanes).

It is important to note that the requirements placed on the organization depend on the type and amount of non-cash contribution it receives, as well as how the organization plans on using, reselling, or otherwise disposing of the contribution.

General Obligations Regarding Non-Cash Contributions

With very limited exceptions, a donor cannot claim a tax deduction for a non-cash contribution of an item of property without a written acknowledgement of the contribution from the recipient organization. In some cases, the law imposes a concurrent legal obligation on the charities to provide an acknowledgement of the donation in the form specified by the IRS.

However, in other cases, there is no legal penalty to the charity if it fails to provide the donor with a written acknowledgement. But, regardless of the charity's legal obligation, in the interest of good donor

relations it is considered a good practice to provide written acknowledgements for all donations. This practice will alleviate any potential problems that a donor may encounter when claiming a tax deduction, and also provides an opportunity for your organization to thank its donors for their valuable contributions.

As a general rule, only donations of cash or property are tax-deductible. The value of services contributed to a charity is not deductible by the donor as a contribution. This rule applies even to the donation of professional services to your nonprofit. An acknowledgement of the donated services is not required by law. (The charity may, however, wish to obtain an estimated value from a donor of professional services for the charity's financial accounting purposes.)

However, if a volunteer incurs out-of-pocket expenses in providing donated services, such as food purchased for a fundraiser, or telephone charges incurred in making calls on behalf of an organization, those expenditures may be deductible, and a written acknowledgement should be provided to the donor when applicable under the rules below.

Non-Cash Contributions Under \$250

If a donor makes a non-cash contribution of property with a value of under \$250, the donor must maintain a receipt for that donation from the charity. The receipt must show the name and address of the charity, the date of the contribution, a description of the property in sufficient detail to identify the property, and if the property is securities, the name of the issue, type of security, and whether it is publicly traded. The charity is not required to value the donated property and should avoid doing so.

If it is impractical for the donor to obtain a receipt for his or her donation, for example, for food dropped off at a collection box, the donor must maintain reliable written records of the date, value, and description of the donated items.

There is no penalty on a charity for failure to provide such a receipt if it has not provided any goods or services to the donor in connection with the donation.

For donations of clothing and household items, the donor may deduct the value of the contribution only if it is in "good used condition" or better. ("Household items" does not include contributions of items such as antiques, art, jewelry, or collectibles.) (See the exception below for items exceeding \$500 in value.)

If, however, the donation exceeds \$75 and the charity provided goods or services in return for the donation, such as event tickets (e.g., a fundraising dinner or performance) or a donor gift of more than insubstantial value, then the charity has a legal obligation to provide a *quid pro quo* receipt that includes specific language. The charity may be subject to penalties for failure to do so. (Details of this receipt are discussed below.)

Non-Cash Contributions Over \$250

For any non-cash donation valued at \$250 or more, a donor is required to have a contemporaneous written acknowledgement from the charity in order to claim a tax deduction for the contribution. This rule also applies to any out-of-pocket expenses that a volunteer or donor may incur on behalf of the charity.

Further, donors may only take tax deductions for the amount of donations that are over and above any benefit that they receive from the recipient in exchange for

the donation. This type of transaction, in which the donor receives a partial benefit for a donation, is commonly referred to as a *quid pro quo* donation.

The tax law requires that for donations valued at greater than \$75, the written acknowledgement should contain information regarding any goods and services that your organization offered in exchange for the donation. If a charity does not adhere to these guidelines, the IRS may impose monetary penalties for noncompliance.

Therefore, to assist donors with their tax preparation, and avoid any potential penalties, it is important to provide your donors with a written statement containing the following information:

1. The name and address of your organization;
2. The name of the donor;
3. The date and location of the contribution; and
4. A description of the non-cash contribution sufficient to identify it, but there is no need to indicate the value of the property in this acknowledgement.

If your organization provided goods or services in exchange for a contribution valued in excess of \$75, the acknowledgement must include a description and good faith estimate of the value of the goods or services provided, unless they consist solely of intangible religious benefits.¹

¹ If the goods or services consisted solely of intangible religious benefits, the acknowledgement should include a statement to this effect. This provision may only be used if your organization is

In making a good faith estimate of the value, a charity may use any “reasonable methodology.” The charity does not have to include the value of any “insubstantial” goods or services provided to the donor. The dollar value of “insubstantial” is revised by the IRS annually.² The acknowledgement must also include a statement that the contribution is only tax deductible to the extent that it exceeds the value of the goods or services received from the charity.

If the contribution is valued in excess of \$75 and your organization did not provide any goods or services in exchange for the contribution, the written acknowledgement should include a statement to this effect. There is no required form for such written acknowledgement; therefore, a letter, postcard, or e-mail is sufficient.

Finally, while it is strongly advised to supply the acknowledgement to the donor at the time of, or shortly after, the donation,

organized exclusively for religious purposes and the goods and services are not generally offered in a commercial transaction outside of the donative context.

² For 2009, a good or service is considered insubstantial if the payment occurs in the context of a fund-raising campaign in which a charitable organization informs the donor of the amount of the contribution that is a deductible contribution, and:

- the fair market value of the benefits received does not exceed the lesser of 2 percent of the donation or \$95, or
- the donation is at least \$47.50, the only items provided bear the organization’s name or logo (e.g., calendars, mugs, or posters), and the cost of these items is within the limit for “low-cost articles,” which is \$9.50.

Free, unordered low-cost articles are also considered to be insubstantial.

you must provide this acknowledgement by the earlier of: the date on which the donor actually files his or her federal income tax return for the year of the contribution; or the due date (including extensions) of the return. If acknowledgements are not sent shortly after a gift, they typically are provided by January 31 of the following year.

There is no penalty on a charity for failure to provide a written acknowledgement so long as no *quid pro quo* benefits were provided to the donor. If goods or services were provided to the donor, however, then a failure to provide a proper acknowledgement could result in penalties.

Non-Cash Contributions of Greater than \$500

If a donor wants to claim a deduction for a non-cash contribution valued at more than \$500, the donor will be required to complete IRS Form 8283 and file it with his or her tax return.³ The Form 8283 is completed by the donor and includes a description of the donated property and the value of the donation.

Non-Cash Contributions of Greater than \$5,000 — Forms 8283 and 8282

If the value of the property is more than \$5,000, the donor is required to have the nonprofit organization sign the Form 8283, acknowledging that the charity received the donated property. The charity is not required to sign the Form 8283 for gifts valued at \$5,000 or less.⁴

³ A Form 8283 is not required for volunteer out of pocket expenses, which should be treated as cash donations.

⁴ Generally, a donor cannot claim a deduction for donated clothing or household items unless they are in good used condition or better. However, a donor may claim a deduction for an item of clothing or a household item that is not in “good used condition”

The donor is responsible for establishing the donation’s value, including obtaining an independent appraisal from a qualified appraiser, if necessary. As with all contributions over \$250, a charity must provide a contemporaneous written acknowledgement of the donation.

In addition, for any contribution over \$5,000, the donor also must meet additional requirements to obtain a deduction. In particular, a donor must obtain a “qualified appraisal” and attach to his or her income tax return an “appraisal summary” regarding the contribution. This appraisal summary has been standardized into Section B of Form 8283, which the donor files with the IRS.⁵ It is important to note that the nonprofit organization cannot provide such an appraisal. Under the regulations, a nonprofit cannot be a “qualified appraiser” for this purpose, even if it has particular experience with the type of items donated.

The person that signs on behalf of your organization must be an official authorized to sign your organization’s tax information returns, or a person specifically authorized to sign by that official. At the time of signing, the form must be essentially completed by the donor, with the exception of value, appraisal, or cost information; a charity should not sign a blank form. By signing this section, the nonprofit acknowledges that it:

- is a tax-exempt organization,
- received the specified property on the specified date, and

or better if the deduction claimed for the single item is more than \$500 and the donor obtains a qualified appraisal of the item. The charitable organization should not provide an appraisal in such situations.

⁵ The appraisal is not required for gifts of publicly traded stock, although Form 8283, Section A is required.

- understands its reporting requirements if it disposes with the property within three years of the donation, which are discussed below.

By signing the Form 8283, the nonprofit is not indicating that it agrees with the appraised value of the donated property, but it does certify that it received the property on a certain date. As a result, it is important for your organization to keep records of when it received these higher-valued non-cash donations. One way to fulfill this obligation is to provide the written statement discussed in the previous section to a donor at the time of the donation and retain a copy for your records. Then, if your organization is later presented with a Form 8283 to sign, it will have a description and the date of the donation.

The donor is required to provide you with a copy of the Form 8283, which you should retain in your records. Your organization will need to track its disposition of the items listed on the Form 8283.

IRS Form 8282

If your organization disposes of donated property valued at greater than \$5,000 within three years of receiving the contribution, it must file an IRS Form 8282, the Donee Information Return, within 125 days of the disposition of the property, and provide a copy of the form to the donor. Failure to do so may lead to penalties for the charity. This requirement also applies if your organization donates the property to another charity.

This provision does not apply if you only sell an individual piece of the donated property valued at \$500 or less. For example, suppose a donor donated to you 20 desks valued at over \$5,000. The donor had to complete a Form 8283 because the total

donation of desks exceeded \$5,000. If your organization then sells one of the desks for \$250, you do not have to fill out a Form 8282.⁵

Your organization is not required to file a Form 8282, if the property was distributed for charitable purposes, even if the charitable purposes are not restricted to only those for which your organization received its tax-exempt status. For example, suppose your organization is a tax-exempt school and it collected books and computer equipment to be used by the students of a school damaged by Hurricane Katrina. It is not required to file Form 8282 when it donates the books and computers to the damaged school, even if your organization received its tax-exempt status for a purpose unrelated to aiding disaster victims.

Form 8282 requires the donee to fill out specific information regarding:

- the original donor,
- the date of the original donation, and
- other information that should be readily accessible if the corresponding Form 8283 and the written statement discussed above are retained in your records.

⁵ A group of items should be indicated separately by the donor on the corresponding Form 8283 before someone from your organization signs it. For example, the Form should specify that you received 20 desks – not just desks. Also, if your organization also received 20 computers from the same donor, they should be listed separately on the Form 8283. Since multiple items can be listed on one Form 8283 and sold separately, the charity may have to file more than one Form 8282 to report the sales. Sets of items are to be reported as sets, not as separate items.

In an effort to remind charitable organizations of these reporting requirements for non-cash contributions, the IRS has added specific questions to the new Form 990.

For example, Question 29 of Schedule M to the new Form 990 requests information regarding the number of times the organization completed the Donee Acknowledgement section of Form 8283. While the instructions to Schedule M acknowledge that an organization is not required to retain detailed records of such forms, as discussed in more detail below, it would be prudent for your organization to retain such records. In addition, Form 8282 is highlighted in Question 7(c) of Part V of the new Form 990.

Special Rules for Vehicle Donations⁶

Before discussing the reporting requirements for receiving and disposing of vehicle donations, there are two points that charities must consider if they are involved in a vehicle donation program:

- First, if the charity is using a third-party to accept and resell or otherwise dispose of the vehicles, it is very important that the third-party properly acts as an agent of the charity. Any agreement entered into with the third-party should be reviewed by an attorney to ensure that this relationship is created and implemented. If not, the charity may risk losing its tax-exempt status.

⁶ Although this Alert only addresses the special rules for vehicle donations, there are also special rules to consider when receiving contributions of land, partial interests in property, conservation property, historic building easements, intellectual property, non-publicly traded securities, food or inventory, certain scientific equipment, taxidermy property, patents, copyrights, software and other forms of intellectual property, among others. Further information can be found on the IRS website at www.irs.gov.

- Second, if the charity decides to take possession of the vehicle and resell or otherwise dispose of it, the charity must be sure that the transfer of title is properly handled. Without a proper transfer of title, the charity may not be able to resell the vehicle and it may become a liability to the charity. Consult the local Department of Motor Vehicles for information about how to properly transfer title to the charity, or if a third party agency is used, the agent.

In addition to the above written acknowledgement, Form 8283, and Form 8282 requirements, if the non-cash contribution is a motor vehicle, boat, or airplane the IRS imposes further reporting requirements on the nonprofit organization. Because donations of motor vehicles are the most common, they will be referenced in this discussion, although the requirements discussed are equally applicable to boats and airplanes. The obligations placed on the nonprofit depend on the claimed value of the motor vehicle and what the nonprofit plans to do with the vehicle. A nonprofit may fulfill the various requirements by properly handling Form 1098-C.

Vehicles Valued at \$500 or Less

If the donor claims a value for the donated vehicle that is \$500 or less, the nonprofit must provide the donor with a written acknowledgement, as described above under the general obligations, in the same format as the nonprofit would provide for any non-cash donation. In addition, the statement must include the donor's name and taxpayer identification number and the vehicle identification number.

The nonprofit's obligations are fulfilled in this situation by properly filling out Form 1098-C. For vehicles valued at less than

\$500, the nonprofit must be sure to check the box that states the donor may not claim a deduction of more than \$500 for the donation of the vehicle (Question 7). Copy C of this form should be given to the donor. In this situation, your organization does not have to file Form 1098-C with the IRS, but should retain a copy for its records.

Vehicles Valued at More Than \$500

For donations of vehicles valued at more than \$500, the nonprofit's obligations depend on what it plans to do with the vehicle. Your organization essentially has four options at this point:

- sell the vehicle in an arm's length transaction,
- significantly use the vehicle to carry out your charitable activities,
- make a material improvement to the vehicle prior to resale, or
- give or sell the vehicle to a needy individual.

Charity Sells the Vehicle

If your organization sells the vehicle in an arm's length transaction, that is, to someone unrelated to your organization, for more than \$500⁷ it must provide a written statement to the donor that includes the information discussed above for vehicles valued at \$500 or less, in addition to a statement certifying that the vehicle was sold in an arm's length transaction, the date the vehicle was sold, and the gross proceeds

⁷ If the sale of the vehicle is for \$500 or less, your organization should follow the reporting requirements discussed above for vehicles valued at \$500 or less.

received from the sale (generally the sales price).

This statement must be provided to the donor within 30 days of the sale of the vehicle. Your organization must also file this information with the IRS by February 28 (or March 31 if filing electronically) of the year following the year in which the charity provides the acknowledgement to the donor. Your organization may fulfill these obligations by properly filling out Form 1098-C, filing copy A with the IRS, and providing copies B and C to the donor.

Significant Use to Carry Out Charitable Purposes or Material Improvement

If the nonprofit intends to significantly use the vehicle to substantially further its regularly conducted charitable activities, or make a material improvement to the vehicle before it disposes of it, in addition to the information discussed above for vehicles valued at \$500 or less, it must provide the following information to the donor within 30 days of the contribution:

- a statement certifying that your organization intends to make a significant use of the vehicle or make a material improvement to the vehicle;
- a detailed statement of the intended use or material improvement;
- a detailed statement of the duration of the intended use, if applicable; and
- a certification that the vehicle will not be sold before the completion of the intended use or the completion of the material improvement.

Whether a use is significant depends on the nature, extent, frequency, and duration of the use. Some examples of a significant use are using a donated vehicle to deliver food to the needy every day for a year, and driving a donated vehicle a total of 10,000 miles in a 1-year period to deliver meals to the needy.

A material improvement includes a major repair that results in a significant increase in the vehicle's value. It does not include painting, removing dents and scratches, cleaning or repairing upholstery, or installation of a theft deterrent device.

Your organization also must file this information with the IRS by February 28 (March 31, if filing electronically) of the year following the year in which the charity provides the acknowledgement to the donor. It can fulfill these obligations by properly filling out Form 1098-C (except for Question 4), filing copy A with the IRS, and providing copies B and C to the donor.

Distribution to a Needy Individual

If one of the purposes of your organization is to relieve the poor and distressed or underprivileged who are in need of a means of transportation, and you intend to give or sell the vehicle to such person at a price significantly below the fair market value, in addition to the information discussed above for vehicles valued at \$500 or less, within 30 days of the contribution your organization must provide the donor with a certification of this intended distribution of the vehicle.

Your organization also must file this information with the IRS by February 28 (March 31, if filing electronically) of the year following the year in which the charity provides the acknowledgement to the donor. It can fulfill these obligations by properly filling out Form 1098-C (except for

Question 4), filing copy A with the IRS, and providing copies B and C to the donor.⁸

Additional Resources

Although the law places the burden of substantiation of non-cash gifts on the donor, the charity also must provide timely written acknowledgement of gifts that meet the legal requirements. Although for many gifts, this obligation is not yet a legal requirement, it nevertheless ought to be viewed as a strategic imperative for all gifts. A donor's loss of a deduction can mean the charity's loss of a donor.

If you have further questions about non-cash charitable donations, you may find the following resources to be helpful:

IRS Publication 1771: Charitable Contribution Substantiation and Disclosure Requirements
<http://www.irs.gov/pub/irs-pdf/p1771.pdf>

IRS Publication 4302, A Charity's Guide to Car Donations
<http://www.irs.gov/pub/irs-pdf/p4302.pdf>

IRS Website for Charities and Nonprofits
<http://www.irs.gov/charities/>

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⁸ The requirements that the IRS places on a charitable organization when receiving motor vehicle donations are highlighted in the new Form 990. Specifically, in Question 7(h) of Part V it asks if the nonprofit organization filed a Form 1098-C as required. Your organization should monitor these donations and abide by the requirements to avoid potential penalties in the future.