



# Legal Aspects of Fundraising

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Fundraising involves knowledge about the legal aspect of charitable donations. These aspects vary from the ethical standards that are set forth for Not for Profit organizations, donor rights as well as regulations established by the Internal Revenue Service (IRS).

Donors want and need to know what they can deduct from their taxes, the details about the organization they are donating to as well as what the IRS allows and won't allow organizations to do and say to their donors and potential donors.

Following is information that will guide you to information and research that will help you to know what you can and cannot do in regard to your donors and the IRS. For example, some ask whether or not it is OK to make a donation to a school for scholarship money and then specify which student should receive that scholarship. IRS Publication 526 in its list of items shown below, under "Contributions You Cannot Deduct" states in number 1 "A contribution to a specific individual".

## Contributions You Cannot Deduct (IRS Publication 526)

*There are some contributions you cannot deduct and others you can deduct only in part.*

*You cannot deduct as a charitable contribution:*

- 1. A contribution to a specific individual,*
- 2. A contribution to a nonqualified organization,*
- 3. The part of a contribution from which you receive or expect to receive a benefit,*
- 4. The value of your time or services,*
- 5. Your personal expenses,*
- 6. A qualified charitable distribution from an individual retirement arrangement (IRA),*
- 7. Appraisal fees,*
- 8. Certain contributions to donor-advised funds, or*
- 9. Certain contributions of partial interests in property.*

Some wonder what specifically is tax deductible in regard to tickets purchased for a fundraising event? Following is a reference to IRS Code 6115 that outlines the guidelines for Special Event donations.

## IRS Regulations Regarding Special Events

*Beginning January 1, 1994, the Internal Revenue Service (IRS) required that every charitable organization must provide a written disclosure statement to donors who make a payment described as a “quid pro quo contribution” in excess of \$75. This new section of the Internal Revenue Code (6115) mandates that the charity notify each event participant in writing of what portion of his or her contribution is tax deductible. To determine what portion of the ticket price is deductible, total the costs of the food and beverage, printing, postage, etc., and then deduct these from the price of the ticket. If the event includes a theatre ticket, then that also must be deducted at the full box office price charged by the theater, not at the discount price that the organization may have received. For example, if the event includes dinner, wine, and entertainment and costs the organization \$85 to hold, and if the ticket price is \$125, then the guest’s tax-deductible donation is not \$125 but \$45—the \$125 cost of the ticket minus the \$85 in goods and services.*

*If a person attends several events sponsored by the same charity during the year but each event is under the \$75 threshold, the payments are not aggregated to meet the \$75 threshold. However, a donor cannot submit several small checks to cover the costs of one event with a high ticket price to circumvent this ruling. If a donor writes a check to a charity for \$100 and receives in return \$45 worth of goods or services, the \$55 would be deductible, but because the \$100 payment, or quid pro quo contribution, exceeds the \$75, the charity must provide the disclosure statement even though the amount the donor can deduct does not exceed the \$75 limit. The safest way for the charity to protect itself after attempting to state the exact amount of the deduction on an invitation is to add “Tax deductible to the fullest extent as provided by law.”*

*Any questions regarding these charitable contribution rules can be answered by reading the IRS publication 1771, a copy of which is included at the end of this chapter. Other resources are available upon request or on their websites from AFP, ASAE, and Independent Sector.*

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Ciconte, Barbara L., Jacob, Jeanne G., 2009 *Fundraising Basics, A Complete Guide*, Third Edition, Sudbury, MA: Jones and Bartlett Publishers, pp. 280-281

At the end of this chapter are the following documents:

### **IRS Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements**

### **Association of Philanthropy (AFP) Code of Ethical Standards**

### **Donor Bill of Rights**

Referring to these documents when setting up a fundraising program at your organization will be helpful. They will also help to answer specific questions as they arise in the realm of fundraising at your institution.

# Charitable

## Contributions Substantiation and Disclosure Requirements

Are you an organization that receives contributions of \$250 or more?

or

Are you an organization that provides goods or services to donors who make contributions of more than \$75?

or

Are you a donor who makes contributions to a charity?

### **IRS Publication 1771, Charitable Contributions—Substantiation and Disclosure Requirements**

The publication names in the title of this chapter explain federal tax law for organizations such as charities and churches that receive tax-deductible charitable contributions and for taxpayers who make contributions.

The IRS imposes recordkeeping and substantiation rules on donors of charitable contributions and disclosure-rules on charities that receive certain quid pro quo contributions:

- a donor must have a bank record or written communication from a charity for any monetary contribution before the donor can claim a charitable contribution on his/her federal income tax return
- a donor is responsible for obtaining a written acknowledgment from a charity for any single contribution of \$250 or more before the donor can claim a charitable contribution on his/her federal income tax return
- a charitable organization is required to provide a written disclosure to a donor who receives goods or services in exchange for a single payment in excess of \$75

More on recordkeeping, written acknowledgments and written disclosures is addressed in this publication.

The rules in this publication do not apply to a donated motor vehicle, boat, or airplane if the claimed value exceeds \$500. For information on vehicle donations, see IRS Publication 4302, *A Charity's Guide to Vehicle Donations*, and IRS Publication 4303, *A Donor's Guide to Vehicle Donations*

For information about organizations that are qualified to receive charitable contributions, see IRS Publication 526, *Charitable Contributions*. Publication 526 also describes contributions you can (and cannot) deduct, and it explains deduction limits. For assistance about valuing donated property, see IRS Publication 561, *Determining the Value of Donated Property*.



## Recordkeeping Rules

### Requirement

A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or letter) showing the name of the charity, the date of the contribution, and the amount of the contribution.

### Payroll Deductions

For charitable contributions made by payroll deduction, the donor may use a pledge card prepared by or at the direction of the charitable organization, along with one of the following documents:

- a pay stub,
- Form W-2, Wage and Tax Statement, or
- other employer-furnished document that shows the amount withheld and paid to a charitable organization.

If a donor makes a single contribution of \$250 or more by payroll deduction, the pledge card or other document from the organization must also include a statement to the effect that the organization does not provide goods or services in whole or partial consideration for any contributions made to the organization by payroll deduction.

Each payroll deduction amount of \$250 or more is treated as a separate contribution for purposes of the \$250 threshold requirement for written acknowledgments.

## Written Acknowledgment

### Requirement

A donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous, written acknowledgment of the contribution from the recipient organization. An organization that does not acknowledge a contribution incurs no penalty; but, without a written acknowledgment, the donor cannot claim the tax deduction. Although it is a donor's responsibility to obtain a written acknowledgment, an organization can assist a donor by providing a timely, written statement containing the following information:

1. name of organization
2. amount of cash contribution
3. description (but not the value) of non-cash contribution
4. statement that no goods or services were provided by the organization in return for the contribution, if that was the case
5. description and good faith estimate of the value of goods or services, if any, that an

organization provided in return for the contribution

6. statement that goods or services, if any, that an organization provided in return for the contribution consisted entirely of intangible religious benefits (described later in this publication), if that was the case

It is not necessary to include either the donor's social security number or tax identification number on the acknowledgment. A separate acknowledgment may be provided for each single contribution of \$250 or more, or one acknowledgment, such as an annual summary, may be used to substantiate several single contributions of \$250 or more. There are no IRS forms for the acknowledgment.

Letters, postcards, or computer-generated forms with the above information are acceptable.

An organization can provide either a paper copy of the acknowledgment to the donor, or an organization can provide the acknowledgment electronically, such as via an e-mail addressed to the donor. A donor should not attach the acknowledgment to his or her individual income tax return, but must retain it to substantiate the contribution. Separate contributions of less than \$250 will not be aggregated. An example of this could be weekly offerings to a donor's church of less than \$250 even though the donor's annual total contributions are \$250 or more.

### Contemporaneous

Recipient organizations typically send written acknowledgments to donors no later than January 31 of the year following the donation. For the written acknowledgment to be considered contemporaneous with the contribution, a donor must receive the acknowledgment by the earlier of:

1. the date on which the donor actually files his or her individual federal income tax return for the year of the contribution;
2. or the due date (including extensions) of the return.

### Goods and Services

The acknowledgment must describe goods or services an organization provides in exchange for a contribution of \$250 or more. It must also provide a good faith estimate of the value of such goods or services because a donor must generally reduce the amount of the contribution deduction by the fair market value of the goods and services provided by the organization. Goods or services include cash, property, services, benefits or privileges. However, there are important exceptions as described below:

#### Token Exception---

Insubstantial goods or services a charitable organization provides in exchange for contributions do not have to be described in the acknowledgment. Good and services are considered to be 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:

1. the fair market value of the benefits received does not exceed the lesser of 2 percent of the payment or \$102,\*
2. or the payment is at least \$51,\* the only items provided bear the organization's name
3. or logo (e.g., calendars, mugs, or posters), and the cost of these items is within the limit for "low-cost articles," which is \$10.20.\*



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

Example of a token exception: If a charitable organization gives a coffee mug bearing its logo and costing the organization \$10.20 or less to a donor who contributes \$51 or more, the organization may state that no goods or services were provided in return for the \$51 contribution. The \$51 is fully deductible.

\*The dollar amounts are for 2013. Guideline amounts are adjusted for inflation. Contact IRS Exempt Organizations Customer Account Services at (877) 829-5500 for annual inflation adjustment information.

#### Membership Benefits Exception —

An annual membership benefit is also considered to be insubstantial if it is provided in exchange for an annual payment of \$75 or less and consists of annual recurring rights or privileges, such as:

1. free or discounted admissions to the charitable organization's facilities or events
2. discounts on purchases from the organization's gift shop
3. free or discounted parking
4. free or discounted admission to member-only events sponsored by an organization, where a per-person cost (not including overhead) is within the "low-cost articles" limits

Example of a membership benefits exception:

If a charitable organization offers a \$75 annual membership that allows free admission to all of its weekly events, plus a \$20 poster, a written acknowledgment need only mention the \$20 value of the poster, since the free admission would be considered insubstantial and, therefore, would be disregarded.

#### Intangible Religious Benefits Exception —

If a religious organization provides only "intangible religious benefits" to a contributor, the acknowledgment does not need to describe or value those benefits. It can simply state that the organization provided intangible religious benefits to the contributor.

What are "intangible religious benefits?"

Generally, they are benefits provided by a tax-exempt organization operated exclusively for religious purposes, and are not usually sold in commercial transactions outside a donative (gift) context.

Examples include admission to a religious ceremony and a de minimis tangible benefit, such as wine used in a religious ceremony.

Benefits that are not intangible religious benefits include education leading to a recognized degree, travel services, and consumer goods.

## Unreimbursed Expenses

If a donor makes a single contribution of \$250 or more in the form of unreimbursed expenses, e.g., out-of-pocket transportation expenses incurred in order to perform donated services for an organization, then the donor must obtain a written acknowledgment from the organization containing:

- a description of the services provided by the donor
- a statement of whether or not the organization provided goods or services in return for the contribution
- a description and good faith estimate of the value of goods or services, if any, that the organization provided in return for the contribution
- a statement that goods or services, if any, that the organization provided in return for the contribution consisted entirely of intangible religious benefits (described earlier in this publication), if that was the case

In addition, a donor must maintain adequate records of the unreimbursed expenses. See Publication 526, Charitable Contributions, for a description of records that will substantiate a donor's contribution deductions.

Example of an unreimbursed expense:

A chosen representative to an annual convention of a charitable organization purchases an airline ticket to travel to the convention. The organization does not reimburse the delegate for the \$500 ticket. The representative should keep a record of the expenditure, such as a copy of the ticket. The representative should obtain from the organization a description of the services that the representative provided and a statement that the representative received no goods or services from the organization.

## Examples of Written Acknowledgments

- “Thank you for your cash contribution of \$300 that (organization’s name) received on December 12, 2013. No goods or services were provided in exchange for your contribution.”
- “Thank you for your cash contribution of \$350 that (organization’s name) received on May 6, 2013. In exchange for your contribution, we gave you a cookbook with an estimated fair market value of \$60.”
- “Thank you for your contribution of a used oak baby crib and matching dresser that (organization’s name) received on March 15, 2013. No goods or services were provided in exchange for your contribution.”

The following is an example of a written acknowledgment where a charity accepts contributions in the name of one of its activities:

- “Thank you for your contribution of \$450 to (organization’s name) made in the name of its Special Relief Fund program. No goods or services were provided in exchange for your contribution.”



## Written Disclosure

### Requirement

A donor may only take a contribution deduction to the extent that his/her contribution exceeds the fair market value of the goods or services the donor receives in return for the contribution; therefore, donors need to know the value of the goods or services. An organization must provide a written disclosure statement to a donor who makes a payment exceeding \$75 partly as a contribution and partly for goods and services provided by the organization. A contribution made by a donor in exchange for goods or services is known as a quid pro quo contribution.

Example of a quid pro quo contribution:

A donor gives a charitable organization \$100 in exchange for a concert ticket with a fair market value of \$40. In this example, the donor's tax deduction may not exceed \$60. Because the donor's payment (quid pro quo contribution) exceeds \$75, the charitable organization must furnish a disclosure statement to the donor, even though the deductible amount does not exceed \$75.

A required written disclosure statement must:

- inform a donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of money (and the fair market value of property other than money) contributed by the donor over the value of goods or services provided by the organization
- provide a donor with a good-faith estimate of the fair market value of the goods or services

An organization must furnish a disclosure statement in connection with either the solicitation or the receipt of the quid pro quo contribution. The statement must be in writing and must be made in a manner that is likely to come to the attention of the donor. For example, a disclosure in small print within a larger document might not meet this requirement.

### Exception

A written disclosure statement is not required:

- where the goods or services given to a donor meet the "token exception," the "membership benefits exception," or the "intangible religious benefits exception" described earlier
- where there is no donative element involved in a particular transaction, such as in a typical museum gift shop sale

### 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.

## Further Information

**Written acknowledgment** — Detailed rules for contemporaneous written acknowledgments are contained in Section 170(f) (8) of the Internal Revenue Code and Section 1.170A-13(f) of the Income Tax Regulations. The “low-cost article” rules are set forth in Section 513(h)(2) of the Code. This information can be found on the IRS Web site at [www.irs.gov](http://www.irs.gov).

**Written disclosure** — Detailed rules for written disclosure statements are contained in Section 6115 of the Internal Revenue Code and Section 1.6115-1 of the Income Tax Regulations. The penalty rules are contained in Section 6714 of the Code. This information can be found on the IRS Web site at [www.irs.gov](http://www.irs.gov).

**IRS publications** — Order publications by calling the IRS at (800) 829-3676. Download IRS publications at [www.irs.gov](http://www.irs.gov).

**IRS customer service** — Telephone assistance for general tax information is available by calling IRS customer service toll-free at (800) 829-1040.EO

**Customer service** — Telephone assistance specific to exempt organizations is available by calling IRS Exempt Organizations Customer Account Services toll-free at (877) 829-5500

**EO Web site** — Visit Exempt Organizations Web site at [www.irs.gov/Charities-&-Non-Profits](http://www.irs.gov/Charities-&-Non-Profits).

**EO Update** — To receive IRS Exempt Organizations’ EO Update, a regular e-mail newsletter with information for tax-exempt organizations and tax practitioners who represent them, visit [www.irs.gov/Charities-&-Non-Profits](http://www.irs.gov/Charities-&-Non-Profits) and click on “Free e-Newsletter.”

**Stay Exempt** ([www.stayexempt.irs.gov](http://www.stayexempt.irs.gov))— An IRS interactive web-based training program covering tax compliance issues confronted by small and mid-sized tax-exempt organizations.



## ETHICAL STANDARDS

*Adopted 1964; amended Oct. 2014*

The Association of Fundraising Professionals believes that ethical behavior fosters the development and growth of fundraising professionals and the fundraising profession and enhances philanthropy and volunteerism. AFP Members recognize their responsibility to ethically generate or support ethical generation of philanthropic support. Violation of the standards may subject the member to disciplinary sanctions as provided in the AFP Ethics Enforcement Procedures. AFP members, both individual and business, agree to abide (and ensure, to the best of their ability, that all members of their staff abide) by the AFP standards.

## PUBLIC TRUST, TRANSPARENCY & CONFLICTS OF INTEREST

*Members shall:*

1. Not engage in activities that harm the members' organizations, clients or profession or knowingly bring the profession into disrepute.
2. Not engage in activities that conflict with their fiduciary, ethical and legal obligations to their organizations, clients or profession.
3. Effectively disclose all potential and actual conflicts of interest; such disclosure does not preclude or imply ethical impropriety.
4. Not exploit any relationship with a donor, prospect, volunteer, client or employee for the benefit of the members or the members' organizations.
5. Comply with all applicable local, state, provincial and federal civil and criminal laws.
6. Recognize their individual boundaries of professional competence.
7. Present and supply products and/or services honestly and without misrepresentation.
8. Establish the nature and purpose of any contractual relationship at the outset and be responsive and available to parties before, during and after any sale of materials and/or services.
9. Never knowingly infringe the intellectual property rights of other parties.
10. Protect the confidentiality of all privileged information relating to the provider/client relationships.
11. Never disparage competitors untruthfully.

## Solicitation & stewardship of philanthropic funds

*Members shall:*

12. Ensure that all solicitation and communication materials are accurate and correctly reflect their organization's mission and use of solicited funds.

13. Ensure that donors receive informed, accurate and ethical advice about the value and tax implications of contributions.
14. Ensure that contributions are used in accordance with donors' intentions.
15. Ensure proper stewardship of all revenue sources, including timely reports on the use and management of such funds.
16. Obtain explicit consent by donors before altering the conditions of financial transactions.

#### Treatment of confidential & proprietary information

##### *Members shall:*

17. Not disclose privileged or confidential information to unauthorized parties.
18. Adhere to the principle that all donor and prospect information created by, or on behalf of, an organization or a client is the property of that organization or client.
19. Give donors and clients the opportunity to have their names removed from lists that are sold to, rented to or exchanged with other organizations.
20. When stating fundraising results, use accurate and consistent accounting methods that conform to the relevant guidelines adopted by the appropriate authority.

#### Compensation, bonuses & finder's fees

##### *Members shall:*

21. Not accept compensation or enter into a contract that is based on a percentage of contributions; nor shall members accept finder's fees or contingent fees.
22. Be permitted to accept performance-based compensation, such as bonuses, only if such bonuses are in accord with prevailing practices within the members' own organizations and are not based on a percentage of contributions.
23. Neither offer nor accept payments or special considerations for the purpose of influencing the selection of products or services.
24. Not pay finder's fees, commissions or percentage compensation based on contributions.
25. Meet the legal requirements for the disbursement of funds if they receive funds on behalf of a donor or client.



# A DONOR BILL OF RIGHTS

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## DEVELOPED BY:



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**PHILANTHROPY** is based on voluntary action for the common good. It is a tradition of giving and sharing that is primary to the quality of life. To assure that philanthropy merits the respect and trust of the general public, and that donors and prospective donors can have full confidence in the not-for-profit organizations and causes they are asked to support, we declare that all donors have these rights:

I

To be informed of the organization's mission, of the way the organization intends to use donated resources, and of its capacity to use donations effectively for their intended purposes.

II

To be informed of the identity of those serving on the organization's governing board, and to expect the board to exercise prudent judgment in its stewardship responsibilities.

III

To have access to the organization's most recent financial statements.

IV

To be assured their gifts will be used for the purposes for which they were given.

V

To receive appropriate acknowledgement and recognition.

VI

To be assured that information about their donations is handled with respect and with confidentiality to the extent provided by law.

VII

To expect that all relationships with individuals representing organizations of interest to the donor will be professional in nature.

VIII

To be informed whether those seeking donations are volunteers, employees of the organization or hired solicitors.

IX

To have the opportunity for their names to be deleted from mailing lists that an organization may intend to share.

X

To feel free to ask questions when making a donation and to receive prompt, truthful and forthright answers.

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