

CLIENT ALERT

Recent Cases Highlight Continued Need for Written Acknowledgment of Charitable Gifts

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When you make a donation of \$250 or more to a charitable organization, you need the organization to issue you an acknowledgment of the gift in order to claim the charitable deduction on your income tax return. The acknowledgment needs to adhere strictly to the requirements provided in Internal Revenue Code Section 170(f)(8); recent cases highlight the Internal Revenue Service's ("IRS") continued willingness to enforce these requirements. Recent Tax Court and Court of Appeals cases in which courts have upheld the IRS's denial of a charitable deduction because of the taxpayer's failure to provide a contemporaneous written acknowledgment that strictly complies with the statutory requirements include:

- *Izen v. Commissioner*. The Fifth Circuit Court of Appeals agreed with the IRS and denied Izen a charitable deduction, noting that "substantial compliance" is not a valid argument for failing to meet statutory requirements. 38 F.4th 459 (5th Cir. 2022);
- *Albrecht v. Commissioner*. The Tax Court upheld the IRS's denial of a charitable deduction where the Deed of Gift that was attached to the taxpayer's return referenced a Gift Agreement that was not provided. The Deed of Gift was not sufficient to constitute a contemporaneous written agreement because it did not make it explicitly clear that the deed constituted the entirety of the agreement, raising the possibility that the museum provided goods or services in connection with the donation. T.C.M. (RIA) 2022-53; and
- *Scholz v. Commissioner*. The Tax Court upheld the IRS's denial of a charitable deduction for the donation of a used car where there was no acknowledgment by the donee organization. T.C.Summ. Op. 2022-5.

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When asking for a “contemporaneous written acknowledgment” of your gift, make certain that it (i) describes the property you have contributed (but not its value, unless it is cash), (ii) states explicitly whether or not the donee organization provided any goods or services in exchange for part or all of the gift and (iii) contains a good faith estimate of the value of any goods or services that the donee organization provided.¹ The acknowledgment can be in many forms, including a receipt, a letter or a deed of gift, but must contain the above-listed three things. The acknowledgment also needs to be issued before you file your tax return for the year in which you made the gift.

If you contribute to a Donor Advised Fund (“DAF”), the acknowledgment must also include a statement by the DAF’s sponsoring organization that said organization has “exclusive legal control” over the assets contributed to the DAF.²

Finally, remember that in certain circumstances, gifts over \$5,000 of property (other than most publicly traded securities) require a qualified appraisal of the property’s fair market value.³ In the recent case *Heinrich C. Schweizer v. Commissioner*, the Tax Court upheld the IRS’s denial of a charitable deduction of a \$600,000 gift of artwork because the taxpayer failed to obtain a qualified appraisal of the artwork donated. T.C.M. (RIA) 2022-102.

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¹ IRC 170(f)(8).

² IRC 170(f)(18)(B).

³ Treas. Reg. 1.170A-13(c).

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