The Complexity of Charitable Contributions

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Charitable contributions present a panoply of Federal Taxation challenges. The unsuspecting taxpayer may find themselves embroiled in an IRS dispute because the rules requiring the substantiation of charitable contributions are not precisely followed. It would not be an exaggeration to state that the IRS has been on a compliance war against taxpayers who make charitable contributions and do not follow the substantiation rules. The old saying, “close only counts in horseshoes,” applies to charitable contributions. Substantial compliance is not enough. “Strict compliance” is the law. The IRS frequently challenges taxpayers who have failed to follow the substantiation rules because, as one tax commentator has stated, “it is low-hanging fruit.” The two most common issues are: (1) Valuation; and (2) Contemporaneous Written Receipt.

1. **Valuation:** A valuation of a charitable contribution of *money* is easy. Valuation is not an issue. A charitable contribution of *property* is more complicated. Depending on the valuation of the property contributed, a taxpayer must comply with various substantiation requirements in order to claim a charitable income tax deduction. For example, a charitable contribution of property valued at: (1) under $500; (2) over $500 but not more than $5,000; and (3) over $5,000 require different substantiation. Regarding property worth more than $5,000, a taxpayer must obtain a “qualified appraisal” by a “qualified appraiser,” which includes complying with lengthy rules. Also, some contributions of art or property worth more than $500,000 require additional compliance. Charitable contributions of non-fungible tokens ("NFTs") present different issues. For example, obtaining a qualified appraisal by a qualified appraiser for an NFT may be difficult. Lastly, qualified appraisals are not required for certain contributions of property, such as publicly traded securities for which market quotations are readily available. In some cases, the donor and the charitable recipient must sign an IRS form.

2. **Contemporaneous Written Acknowledgement:** A “Contemporaneous Written Acknowledgement” (“CWA”) is required for contributions of money or property to a charity. Among the most important of the requirements is that the charitable organization states whether the donor received any goods and services in exchange for the contribution. The CWA must be received by the taxpayer on or before the *earlier* of: (1) the date on which the taxpayer files his/her/their income tax return for the year that the contribution was made; (2) the due date, including extensions, for such return.

A failure by the taxpayer to comply with the strict requirements for charitable contributions will cause the taxpayer to lose the charitable income tax deduction, and, if there is an increase in income tax, may result in interest and penalties.

In addition to the substantiation requirements, Taxpayers would be wise to consider the following points:

3. Always have your tax preparer complete a proforma tax return estimating the result of a charitable contribution. The increase in the standard deduction and other changes in the law may reduce the expected benefit of the charitable contribution.

4. If you need a qualified appraisal by a qualified appraiser, you need to contact such person to confirm that they are “qualified,” and the report will constitute a qualified appraisal. It is generally advisable to hire a qualified appraiser who has done qualified appraisals before.

5. If the charitable contribution is made in property, make sure that any documents needed to transfer title to the charitable organization are completed before the end of the year, and those documents must be transferred to the charitable organization prior to the end of the year.