



New Substantiation Rules Required for Contributions of Motor Vehicles, Boats and Airplanes

By Bruce R. Hopkins

One of the last pre-election acts by the 108th Congress was completion of its work on the American Jobs Creation Act of 2004 (Pub. L. 108-357). The President signed the measure into law on October 22. The Act contains several provisions directly pertaining to the law of tax-exempt organizations and charitable giving.

Two of the charitable giving provisions concern the treatment of charitable contributions of patents and other forms of intellectual property; and the treatment of charitable contributions of motor vehicles, boats and airplanes. In this issue on *Nonprofit Insights*, we'll look only at the latter, saving a discussion of intellectual property issues for our next issue.

Planes, Boats and Automobiles

There are new substantiation rules for contributions of motor vehicles, boats and airplanes – collectively termed *qualified vehicles*. These new rules supplant, in cases of contributions of qualified vehicles, the general gift-substantiation rules where the claimed value of the gift exceeds \$500.

Under these new rules, a federal income tax charitable contribution deduction is not allowed unless the donor substantiates the contribution by including with his or her tax return a written acknowledgment from the recipient organization. If the organization sells the vehicle without any "significant intervening use or material improvement," the amount of the charitable deduction may not exceed the gross proceeds received from the sale.

The acknowledgment that must be provided to document the gift of

a qualified vehicle must contain the donor's name and taxpayer identification number and the vehicle identification number or similar number. If the qualified vehicle was sold by the charity without such use or improvement, your acknowledgement must also certify that the vehicle was sold in an arm's-length transaction between unrelated parties and specify the amount of gross proceeds from the sale. It should also state that the deductible amount may not exceed the amount of the gross proceeds.

If there is significant intervening use or material improvement, the acknowledgement must include a certification as to the intended use or material improvement of the vehicle and the intended duration of the use, and specify that the vehicle will not be transferred in exchange for money, other property, or services before completion of the use or improvement.

There is now a penalty for providing a false, fraudulent, untimely or incomplete acknowledgement, by a charitable donee to a donor of a qualified vehicle. If the vehicle is sold without any significant intervening use or material improvement by the recipient organization, the penalty is the greater of (1) the product of the highest rate of income tax and the sales price stated in the acknowledgement or (2) the gross proceeds from the sale of the vehicle. In the case of an acknowledgement pertaining to any other qualified vehicle, the penalty is (1) the product of the highest rate of income tax and the claimed value of the vehicle or (2) \$5,000.

Commentary

This new provision limits the charitable contribution deduction, generally limiting it to the gross amount received by the donee charity as the result of the gift. Such a change is understandable, given the abuses in these areas (largely, instances of overvaluation), but it could mark the beginning of a troubling trend.

Pushed to its extreme, this approach would take into account fundraising costs. For example, a charitable organization with a 20 percent fundraising cost in the year of the gift would yield a charitable deduction of only 80 cents per dollar contributed. That would be a bad tax policy outcome.

Bruce R. Hopkins is a lawyer specializing in nonprofit organizations.