



Thanking Donors – The Legal Way!

**Robyn Miller, Corporate/Tax Counsel
Pro Bono Partnership of Atlanta
December 6, 2017**

Mission of Pro Bono Partnership of Atlanta:

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals. We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Pro Bono Partnership of Atlanta Eligibility & Other Information

- In order to be a client of Pro Bono Partnership of Atlanta, an organization must:
 - ✓ Be a 501(c)(3) nonprofit.
 - ✓ Be located in or serve the greater Atlanta area.
 - ✓ Serve low-income or disadvantaged individuals.
 - ✓ Be unable to afford legal services.
- *Visit us on the web at www.pbpatl.org*
- We host free monthly webinars on legal topics for nonprofits
 - ✓ To view upcoming webinars or workshops, visit the [Workshops Page](#) on our website
 - ✓ Join our mailing list by emailing rla@pbpatl.org

Legal Information:

- ✓ This workshop presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.
- ✓ © 2017. All rights reserved. No further use, copying, dissemination, distribution or publication is permitted without express written permission of Pro Bono Partnership of Atlanta.

IRS Publication 526 Charitable Contributions

- Provides detail!
- https://www.irs.gov/publications/p526#en_US_2016_publink1000229721



What is a Charitable Contribution?

IRS defines a charitable contribution as a donation or gift to, or for the use of, a qualified organization. It is voluntary and is made without getting, or expecting to get, anything of equal value.



Donative Intent

- There must be “Donative Intent”
- Voluntary – not an “exchange” transaction
 - ✓ Given without the expectation of receiving something of value in return that is outside “quid pro quo” and/or “safe harbor” rules.
 - ✓ There is no value attached to naming opportunities, names on honor rolls or gift club membership; “safe harbor” rules apply.

What is NOT a Tax Deductible Gift

- Gifts of services (time, labor, effort)
- Discounts
- Gifts to, or for the benefit of, a specific individual (e.g., tuition payments)
- Contributions in which the donor benefits
- Cost of raffle tickets

What is NOT a Tax Deductible Gift (cont.)

- **Use of Space** - Partial Interest (use of home, office space, vehicle, condo, vacation home) generally not deductible (IRS Pub. 526)
 - ✓ **Example 1.** You own a 10-story office building and donate rent-free use of the top floor to a charitable organization. Because you still own the building, you have contributed a partial interest in the property and can't take a deduction for the contribution.
 - ✓ **Example 2.** Mandy White owns a vacation home at the beach that she sometimes rents to others. For a fund-raising auction at her church, she donated the right to use the vacation home for 1 week. At the auction, the church received and accepted a bid from Lauren Green equal to the fair rental value of the home for 1 week. Mandy can't claim a deduction because of the partial interest rule. Lauren can't claim a deduction either, because she received a benefit equal to the amount of her payment.
- Partial Interest not the same as a “fractional interest” e.g., Artwork
- A few, very limited exceptions where Partial Interest is deductible. See IRS Pub 526.

Substantiation & Disclosure Requirements

- The IRS imposes:
 - ✓ Recordkeeping and substantiation rules on donors of charitable contributions and
 - ✓ Disclosure rules on charities that receive certain quid pro quo contributions.
- IRS Publication 1771
 - ✓ <https://www.irs.gov/pub/irs-pdf/p1771.pdf>
- Special rules apply to a donated items including motor vehicles, boats, or airplanes, if the claimed value exceeds \$500.

Substantiation of Donation

- A Record of the Contribution
 - ✓ A donor cannot take tax deduction without a record of contribution in the form of:
 - a) a written communication from the charity (e.g. a receipt or letter), or
 - b) a bank record (e.g. a cancelled check).
 - ✓ Evidence of donation must state:
 - (a) the name of the charity,
 - (b) the date of the donation, and
 - (c) the amount of the donation.

Substantiation: Written Acknowledgement by Organization

➤ For donations of \$250 or more:



- ✓ Donor **MUST** obtain a written contemporaneous receipt from the organization acknowledging the contribution before the donor can claim a charitable contribution on his/her federal income tax return
- ✓ Donations throughout the year may be bundled into one acknowledgement letter/receipt.

Written Acknowledgement by Organization (cont.)

➤ Content of Written Acknowledgement:

- (1) Name of charity
- (2) Amount of cash contribution or description of non-cash contribution, and
- (3) One of the following:
 - a. Statement that no goods or services were provided by the organization in return for the contribution, if that was the case;
 - b. Description and good faith estimate of the value of goods or services the organization provided in return, if any, for the donation (***quid pro quo***); or
 - Exceptions apply.
 - c. State that goods or services provided consisted entirely of intangible religious benefits, if that was the case.

Organization Disclosure Requirements

➤ *Quid Pro Quo* Donations

- A contribution made by a donor in exchange for goods or services is known as a *quid pro quo* contribution.
- Donation amount must exceed the value of the goods/services provided by organization in exchange for donation

➤ Written Disclosure Statement

- ✓ An organization must provide a written disclosure statement to a donor who makes a *quid pro quo* donation over \$75.
- ✓ The written disclosure must:
 - ✓ Inform donor that the amount of donation (cash or fmV of goods) that is deductible for federal income tax purposes is reduced by the value of or services provided by the organization, and
 - ✓ Provide a donor with a good-faith estimate of the fair market value of the goods or services.

✓ Examples

Disclosure Requirements (cont.)



➤ Penalty

A penalty is imposed on organizations that do not meet the written disclosure requirement.

- ✓ \$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.

Written Acknowledgement By Organization (cont.)

➤ Exceptions

When describing goods or services an organization provides in return and estimating the fair market value of such goods or services in a written acknowledgement, important exceptions apply.

- ✓ Token Exception
- ✓ Membership Benefits Exception

Written Acknowledgement by Organization (cont.)

➤ Token Exception

- ✓ No need to describe “insubstantial goods or services” a charity provides in return (not a quid pro quo)
- ✓ Good and services are considered to be “insubstantial” if:
 - Free, unordered “low-cost articles” (donor did know was receiving these items when made the donation); or
 - The payment occurs in the context of a fund-raising campaign where charity informs donor the amount of the contribution that is deductible, and
 - Cost of item donor receives is not more than 2% of the payment or \$107* (whichever is less), or
 - Donor’s donation is at least \$53.50* or more and donor only receives a token item with the organization’s name/logo that costs no more than \$10.70* (for example, calendars, mug or posters) (e.g. “low-cost article”)

Written Acknowledgement by Organization cont.)

➤ Membership Benefits Exception

- ✓ Annual membership payment of \$75 or less
- ✓ Certain benefits are considered insubstantial (need not report on acknowledgement):
 - Any rights or privileges[^] that member can use frequently while a member, such as:
 - Free or discounted admission to the organization's facilities or events,
 - Free or discounted parking,
 - Preferred access to goods or services, and
 - Discounts on the purchase of goods and services.
 - Admission, while a member, to member only events if the organization reasonably projects that the cost per person (excluding any allocated overhead) isn't more than \$10.60.

Written Acknowledgement by Organization (cont.)

- Intangible Religious Benefit “Exception”
 - ✓ “Intangible religious benefits” = benefits provided by a tax-exempt organization operated exclusively for religious purposes, and are not usually sold in commercial transactions
 - ✓ If a religious organization provides only “intangible religious benefits” to donor, the acknowledgment does not need to describe or value those benefits.
 - ✓ Acknowledgement should simply state that the organization provided intangible religious benefits to donor.

Written Acknowledgement by Organization (cont.)

➤ Format

- ✓ There are no IRS forms for the acknowledgment
- ✓ The acknowledgment could be a letter, postcard, computer-generated form, if payroll deduction may use Form W-2 or pledge card
- ✓ The acknowledgment may be provided as paper copy or electronically (e.g. email)

➤ “Contemporaneous”

- ✓ 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:
 - The date on which the donor actually files his or her individual federal income tax return for the year of the contribution; or
 - the due date (including extensions) of the return

T.C. Memo. 2012-140

UNITED STATES TAX COURT

DAVID P. DURDEN AND VERONDA L. DURDEN, Petitioners *v.*
COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 17441-09.

Filed May 17, 2012.

David P. Durden and Veronda L. Durden, pro sese.

Brock E. Whalen, for respondent.

PBPA Acknowledgment Guide

- Sample acknowledgments
- Additional details
- <https://www.pbpatl.org/wp-content/uploads/2015/12/Acknowledgement-Guide-Revised-12-1-15-rm.pdf>

Donor Substantiation: Large Non-Cash Donations

- If a donor's deduction for a noncash contribution is more than \$500, s/he has to complete Form 8283, *Noncash Charitable Contributions* and attach it to his or her tax return.
 - ✓ If a donor claims a deduction of \$5,000 or less, donor must fill out Form 8283, Section A.
 - ✓ If a donor claims a deduction of \$5,000 or more, donor will need a qualified appraisal of the noncash property and fill out Form 8283, Section B.
 - ✓ If a donor claims a deduction of \$500,000, donor will need to attach the qualified appraisal to his or her return.

Vehicle Donations

- What can organizations do with donated vehicles?
 - A. Keep donated vehicles or
 - B. Dispose of them.



Vehicle Donations (cont.)

➤ If you choose to **keep** a donated vehicle...

An organization may use a donated vehicle in order to conduct activities that substantially further its charitable programs.

- ✓ The use must be:
 - ✓ Regular,
 - ✓ For a significant period of time and
 - ✓ Used for the organization's charitable programs.
- ✓ Examples

Vehicle Donations (cont.)

- If you choose to **dispose of** a donated vehicle...
 - ✓ A nonprofit that chooses to dispose of a vehicle may:
 - Distribute it to a low-income individual at no cost or a price significantly below FMV (if organization's charitable purpose includes relieving the poor and distressed or the underprivileged), or
 - Choose to sell a vehicle and use the proceeds exclusively to fund the charitable purposes of organization.

Donated Vehicles - Written Acknowledgement

- **Written Acknowledgement Required**
 - ✓ A nonprofit must generally provide the donor with a written acknowledgement
- **Content**

The information provided in the written acknowledgement depends on:

 - (a) the value of the vehicle and
 - (b) how the nonprofit uses the vehicle.

Donated Vehicle - Written Acknowledgement (cont.)

➤ Vehicle Valued at \$500 or Less

- ✓ The written acknowledgement should include:
 - Name of the nonprofit and date of the donation
 - Description of the vehicle, including Vehicle Identification Number (VIN)
 - Whether the nonprofit provided any goods or services in return for the vehicle. If so, the nonprofit must provide a good faith estimate of the value of those goods or services
- ✓ The acknowledgement should be provided to the donor by the date on which the donor files his or her individual federal income tax return or the due date of the return (whichever is earlier).

Donated Vehicle - Written Acknowledgement (cont.)

➤ Vehicle Valued at More Than \$500

- ✓ The written acknowledgement should include:
 - Nonprofit's name and EIN
 - Donor's name and taxpayer identification number
 - Date of the donation
 - Description of the vehicle, including Vehicle Identification Number (VIN)
 - Whether the nonprofit provided any goods or services in return for the vehicle. If so, nonprofit must provide a good faith estimate of the value of those goods or services
 - Information on what the nonprofit did or intends to do with the vehicle (4 options)

Donated Vehicle - Written Acknowledgement (cont.)

➤ Vehicle Valued at More Than \$500 (cont.)

✓ Option #1: Nonprofit Uses Vehicle:

If the nonprofit keeps the vehicle to use, the acknowledgement must also include:

- a. Statement certifying that the nonprofit intends to make a significant intervening use of the vehicle;
 - b. Detailed statement of the intended use;
 - c. Detailed statement of the duration of that use; and
 - d. Certification that the vehicle will not be sold before duration of that use.
- ✓ Acknowledgement must be provided to the donor within 30 days of the contribution

Donated Vehicle - Written Acknowledgement

(cont.)

➤ Vehicle Valued at More Than \$500 (cont.)

✓ Option #2: Vehicle Sold or Given to Needy individual:

If the nonprofit intends to sell or give the vehicle to a needy individual, the acknowledgement must also include:

- a. Statement that the nonprofit intends to sell or give the vehicle to a needy individual at price below FMV; and
- b. Statement that the gift or sale is in direct furtherance of the nonprofit's purpose.

- ✓ Acknowledgement must be provided to the donor within 30 days of the contribution



Donated Vehicle - Written Acknowledgement (cont.)

➤ Vehicle Valued at More Than \$500 (cont.)

✓ Option #3: Nonprofit Sells Vehicle:

If the nonprofit sells the vehicle for more than \$500, the acknowledgement must also include:

- a. Statement certifying that sale occurred in an arms-length transaction between unrelated parties;
 - b. Date vehicle was sold;
 - c. Gross proceeds received from the sale; and
 - d. Statement that the donor's deduction may not exceed the gross proceeds of the sale.
- ✓ Acknowledgment must be provided within 30 days of the sale

Donated Vehicle - Written Acknowledgement (cont.)

➤ Vehicle Valued at More Than \$500 (cont.)

✓ Option #4: Material Improvements:

If the nonprofit intends to make a material improvement to the vehicle, the acknowledgement must also include:

- a. Statement that the nonprofit intends to make a material improvement to vehicle;
 - b. Detailed description of the intended material improvement; and
 - c. Certification that the vehicle will not be sold before completion of material improvement.
- ✓ Acknowledgement must be provided to the donor within 30 days of the contribution

Vehicle Donation - IRS Filing and Disclosure Requirements

- The organization and donor each have filing requirements with the IRS concerning the vehicle donation. These forms include:
 - ✓ Form 990 (organization)
 - ✓ Form 1098-C (organization)
 - ✓ Form 8283 (donor files, organization completes portion and signs if donor's deductions over \$5,000)
 - ✓ Form 8282 (organization in certain circumstances)
- For more information see:
 - ✓ IRS Publications 526, 4302 and 4303
 - ✓ PBPA website: <https://www.pbpatl.org/wp-content/uploads/2016/10/VehicleDonations1-rev-res-12-1-15-rm-1.pdf>

Vehicle Donation - State Law Requirements

The organization must also consider state regulations regarding a vehicle donation program, including:

- Transfer of Title
- Georgia Charitable Solicitations Act
- Sales Tax

Record Keeping

- Maintain records of donation acknowledgements
- Maintain records of charitable registration filings
- Maintain records of fundraising activities
 - ✓ Activities that included quid pro quo donations including how value of goods/services determined
 - e.g., Tickets that state value of goods/services provided
 - ✓ Sponsorship packages and value of goods/services provided



Additional Resources

➤ PBPA:

- ✓ Acknowledgement Guide: <https://www.pbpatl.org/wp-content/uploads/2015/12/Acknowledgement-Guide-Revised-12-1-15-rm.pdf>
- ✓ Vehicle Donations: <https://www.pbpatl.org/wp-content/uploads/2016/10/VehicleDonations1-rev-res-12-1-15-rm-1.pdf>
- ✓ IRS Publication 526 Charitable Contributions: https://www.irs.gov/publications/p526#en_US_2016_publink1000229709
- ✓ IRS Publication 1771 Charitable Contributions: Substantiation and Disclosure: <https://www.irs.gov/pub/irs-pdf/p1771.pdf>
- ✓ IRS Publications re Vehicles:
 - 4302 (Charity Guide to Vehicle Donation) <https://www.irs.gov/pub/irs-pdf/p4302.pdf>
 - 4303: (Donor's Guide to Vehicle Donation) <https://www.irs.gov/pub/irs-pdf/p4303.pdf>



For More Information:

If you would like more information about the services of Pro Bono Partnership of Atlanta, contact us at:

www.pbpatl.org

Phone: (404) 618-0900

info@pbpatl.org