

Tax Info For Business

Contributions

Charitable organizations described in § 501(c)(3), other than testing for public safety organizations, are eligible to receive tax-deductible contributions in accordance with § 170.

A charitable organization must provide a written disclosure statement to donors of a quid pro quo contribution in excess of \$75. A quid pro quo contribution is a payment made to a charity by a donor partly as a contribution and partly for goods or services provided to the donor by the charity. For example, if a donor gives a charity \$100 and receives a concert ticket valued at \$40, the donor has made a quid pro quo contribution. In this example, the charitable contribution portion of the payment is \$60. Even though the part of the payment available for deduction does not exceed \$75, a disclosure statement must be filed because the donor's payment (quid pro quo contribution) exceeds \$75. The required written disclosure statement must:

1. Inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of any money (and the value of any property other than money) contributed by the donor over the value of goods or services provided by the charity, and
2. Provide the donor with a good faith estimate of the value of the goods or services that the donor received.

The charity must furnish the statement in connection with either the solicitation or the receipt of the quid pro quo contribution. If the disclosure statement is furnished in connection with a particular solicitation, it is not necessary for the organization to provide another statement when the associated contribution is actually received.

No disclosure statement is required when:

1. The goods or services given to a donor meet the standards for "insubstantial value" set out in Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987 (as updated);
2. There is no donative element involved in a particular transaction with a charity (for example, there is generally no donative element involved in a visitor's purchase from a museum gift shop); or
3. There is only an intangible religious benefit provided to the donor. The intangible religious benefit must be provided to the donor by an organization organized exclusively for religious purposes, and must be of a type that generally is not sold in a commercial transaction outside the donative context.

A penalty is imposed on a charity that does not make the required disclosure in connection with a quid pro quo contribution of more than \$75. The penalty is \$10 per contribution, not to exceed \$5,000 per fund-raising event or mailing. The charity can avoid the penalty if it can show that the failure was due to reasonable cause.

Donors taking a deduction under § 170 are required to obtain contemporaneous written substantiation for a charitable contribution of \$250 or more. To be "contemporaneous" the written substantiation must generally be obtained by the donor no later than the date the donor actually files a return for the year the contribution is made.

If the donee provides goods or services to the donor in exchange for the contribution (a quid pro quo contribution), this written substantiation (acknowledgment) must include a good faith estimate of the value of the goods or services. The donee is not required to record or report this information to the IRS on behalf of a donor. The donor is responsible for requesting and obtaining the written acknowledgement from the donee. Although there is no prescribed format for the written acknowledgment, it must provide sufficient information to substantiate the amount of the contribution.

For more information, see Publication 1771, which can be obtained by calling 1-800-TAX-FORM (1-800-829-3676).

For more information, see [Updates on Disclosure and Substantiation Rules](#). Also see [IRC 6700 and IRC 6701 and Charitable Contribution Deductions](#).

TAX-FAX Up-Dates Church Financial Services

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Returning a Charitable Contribution to a Donor

General rule. A charitable contribution is a gift of money or property to a charitable organization. Like any gift, a charitable contribution is an irrevocable transfer of a donor's entire interest in the donated cash or property. Since the donor's entire interest in the donated property is transferred, it, generally, is impossible for the donor to recover the donated property. As we will see, there are a few exceptions to this general rule.

Undesignated contributions. Most charitable contributions are undesignated, meaning that the donor does not specify how the contribution is to be spent. An example would be a church member's weekly contributions to a church's general fund. Undesignated contributions are unconditional gifts. A church has absolutely no legal obligation to return undesignated contributions to a donor under any circumstances. In fact, there are a number of problems associated with the return of undesignated contributions to a donor. These include:

Inconsistency. As noted above, a return of a donor's contributions would be completely inconsistent with the church's prior characterization of the transfers as charitable contributions. As already noted, a charitable contribution is tax-deductible since it is an irrevocable gift to a charity. If a church complies with enough donors' requests to refund their contributions, then this raises a serious question as to the deductibility of any contribution made to the church. Contributions under these circumstances might be viewed as no-interest "demand loans"--that is, temporary transfers of funds that are recallable by donors at will. As such they would not be tax-deductible as charitable contributions.

Amended tax returns. Donors who receive a "refund" of their contributions would have to be informed that they will need to file amended federal tax returns if they previously claimed a charitable contribution deduction for their "contributions". This would mean that donors would have to file a Form 1040X with the IRS.

Church liability. In order to avoid the potential penalty for "aiding and abetting" a taxpayer in the substantial understatement of tax, the church would need to notify the IRS of the return of the contribution. This notification would need to include the donor's name, address, social security number, the date and amount of the earlier contribution, and the date the contribution was returned. Failure by the church to notify the IRS of the return of the contribution could result in a penalty of \$1,000 for aiding and abetting in the substantial understatement of tax. The church should inform the donor if it plans to notify the IRS of the returned contribution.

Conclusion. Churches should resist appeals from donors to return their undesignated contributions. There is no legal basis for doing so, even in "emergencies. Do not honor such requests without the recommendation of an attorney.

Designated contributions. Often a donor will make a "designated" contribution to a church. That is, the donor designates how the contribution is to be spent. Designated contributions are held by the church "in trust" for the designated purpose. So long as the church honors the designation, or plans to do so in the foreseeable future, it has no legal obligation to return a donor's designated contribution.

What if a donor contributes money to a church's building fund and the church later abandons its plans to construct a new facility? Such contributions are conditioned on the church pursuing its building program. When the condition fails, the contribution is revocable at the option of the donor. Should the church refund designated contributions to donors under these circumstances? There are a number of possibilities, including the following:

Donors can be identified. If donors can be identified, they should be asked if they want their contributions returned or retained by the church and used for some other purpose. Ideally, donors should communicate their decision in writing to avoid any misunderstandings. Churches must provide donors with this option in order to avoid violating their legal duty to use "trust funds" only for the purposes specified. Of course, churches should advise these donors that they will need to file amended tax returns if they claimed a charitable contribution deduction for their contributions in a prior year.

Donors cannot be identified. A church may not be able to identify all donors who contributed to the building fund. Under these circumstances the church has a variety of options. One option would be to address the matter in a meeting of church members. Inform the membership of the amount of designated contributions in the church building fund that cannot be associated with individual donors, and ask the church members to take an official action with regard to the disposition of the building fund. In most cases, the church membership will authorize the transfer of the funds to the general fund. Note that this procedure is appropriate only for that portion of the building fund that cannot be traced to specific donors. Another option is to ask a court for authorization to transfer the building fund to another church fund.

. **For more information on this subject and other tax matters, contact Church Ministry Resources 1.800.222.1840 and order *The Church & Clergy Tax Guide* or *Church Treasurer Alert*. Used by permission. If you would like future TAX-FAX Updates emailed, please send a notice to khamilton@eabaptist.org. This document is intended to provide churches, pastors, and staff with current and accurate information about the subjects covered. However, such information is not intended to be sufficient for dealing with a particular legal problem, and the authors and distributors do not warrant or represent its suitability for such purpose. The reader should not rely upon this document as a substitute for independent legal consultation or IRS instructions.