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Dear Friends/Clients:

Many of you donate to charitable organizations and claim an itemized deduction on your personal tax returns for said charitable giving. A recent important tax court case has been ruled on which you should all take note of – both when giving charitable contributions and also if you are a board member of a charitable organization.

In David P Durden v. Comm in T.C. Memo 2012-140 the tax court assessed David P Durden and his wife Veronda L Durden \$7,552 in taxes + accuracy related penalty of \$1,510.40 related to the charitable deductions claimed on their jointly filed 2007 tax return. As a background, the Durden's in 2007 gave \$22,517 in total to their church mainly in donations of over \$250. The Durden's had the cancelled checks and a letter dated 1/10/08 from the church acknowledging and thanking the Durden's for their 2007 charitable contributions. The Durden's did NOT accept the acknowledgment letter as it lacked the phrase that the Durden's had not received any goods or services in exchange for their donations. On 6/21/09 the church issued a new (2<sup>nd</sup> acknowledgment letter) to the Durden's with the required wording. The IRS argued that the first letter was invalid since it did not have the proper wording and the 2<sup>nd</sup> letter was invalid since it was NOT a CONTEMPORANEOUS written acknowledgment from the charitable organization. The tax court agreed with the IRS and thus the additional taxes and the penalty.

In general a taxpayer may not deduct any charitable contribution of \$250 or more unless the taxpayer substantiates the contribution with a CONTEMPORANEOUS written acknowledgment from the charitable organization (this is in addition to canceled checks/credit card receipts, etc). The written acknowledgment generally must include three things: (1) The amount of cash paid and a description of any property other than cash contributed; (2) whether the charity provided any goods or services in consideration for the cash or property contributed; AND (3) a description and good-faith estimate of the value of any goods or services provided by the charitable organization. A written acknowledgment is contemporaneous if the taxpayer obtains the acknowledgment on or before the earlier of the date on which the taxpayer files a return for the taxable year in which the contribution was made, or the due date (including extensions) for filing such return.

When a charitable organization does provide goods or services in consideration for a taxpayer's payments (for example meals at a charitable fundraiser or items purchased at an auction of donated goods/services that the charity auctions off to raise money for the charity) then the charity is to make a good-faith estimate as to the value of the fair market value of the goods and services provided, without regard to the manner in which the organization made the estimate. A taxpayer can rely on a contemporaneous written acknowledgment for the fair market value however a taxpayer may not use the charitable organization's estimate of the value if the taxpayer knows, or has reason to know, that the estimate is unreasonable.

Some more advice on charitable giving:

- a) When donating less than \$250 then the charitable organization is not required to send a taxpayer an acknowledgment letter, HOWEVER the taxpayer should make these donations using checks and or credit cards. Thus giving a cash donation of even a few dollars to say the

Salvation Army bell ringers would technically not be deductible unless you had the written acknowledgement from the charity. Ridiculous, perhaps but that is the law ☹

- b) When giving clothing and household items to charity I would suggest requesting a written receipt from the charity rather than dropping the items off in one of those drop off boxes that are popping up everywhere.
- c) Most people believe their goods are worth more than the IRS would value them at so be aware that just because one donates a suit made by a designer label this does not necessarily mean in the eyes of the IRS that the suit is more valuable than a non-designer label suit that you or someone else may be donating
- d) Giving goods to a charity(ies) that total more than \$500 then make certain to have the receipt/acknowledgment
- e) Giving goods of \$5,000 or more than be aware that a SIGNED and written appraisal from a QUALIFIED appraiser is to be attached to the taxpayer's tax return
- f) Donations to foreign charities are generally NOT deductible on a taxpayer's US tax return

This is just a general summary of some of the situations to be aware of when donating to a charity but of course it does not cover all situations so if you have any questions please feel free to contact me.

Regards  
John

PS- If you are on the board of a charity you should make certain that they issue the proper acknowledgement letters and don't be afraid to ask if the charity has proper insurance to protect you from lawsuits if the charity mishandles a situation

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