

PRIMER ON CHARITABLE GIVING, QUALIFIED SPONSORSHIP PAYMENTS, CHARITABLE SOLICITATIONS AND CHARITABLE GAMING

Victor J. Ferguson

614.464.6227 | vjferguson@vorys.com

Vorys, Sater, Seymour and Pease LLP

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Overview

- Charitable Giving
- Qualified Sponsorship Payments
- State Charitable Solicitations Rules
- Charitable Gaming



What is a Charitable Gift?

The IRS attributes several characteristics to charitable gifts:

- A clear and unmistakable intention on the part of donor absolutely and irrevocably to divest himself or herself of title, dominion, and control of the property;
- The irrevocable transfer of the present legal title and dominion and control of the entire gift to the donee so that the donor can exercise no further act of dominion and control over it;
- A delivery by the donor to the donee of the gift or of the most effective means of commanding dominion over it; and
- The acceptance of the gift by the donee.

What is a Charitable Gift? (cont'd)

- To be eligible for an income tax charitable deduction, the contribution generally must be made to an organization recognized as a 501(c)(3) organization by the IRS.
 - Not all tax-exempt organizations qualify as 501(c)(3) organizations.
- In general, the income tax charitable deduction will be for the fair market value of the property at the time of the contribution.

What Limitations Apply for the Income Tax Charitable Deduction?

	Public Charities and Private Operating Foundations		Private Non-Operating Foundations	
<u>Type of Gift</u>	<u>Amount of Deduction</u>	<u>Percentage of AGI Limitation</u>	<u>Amount of Deduction</u>	<u>Percentage of AGI Limitation</u>
Cash	Fair Market Value	60%	Fair Market Value	30%
Short-Term Capital Gain Property	Basis	50%	Basis	30%
Long-Term Capital Gain Qualified Appreciated Stock	Fair Market Value	30%	Fair Market Value	20%
Other Long-Term Capital Gain Property	Fair Market Value	30%	Basis	20%

Limitations (cont'd)

Individuals

- When a taxpayer gives a gift that is greater than the deduction limit that year, the taxpayer may carry the excess deduction forward for **5 years**.

Corporations

- A corporation that files its own tax return can deduct charitable gifts up to 10% of its taxable income.
- Entitled to carryover unused deductions for **5 years**.

Limitations (cont'd)

Things You Cannot Deduct:

- Volunteer time
- Value of professional services provided
- Purchase of raffle ticket
- Gifts to family/friends in need
- Private school tuition

Donor Substantiation Requirements

- Disallowance Rule. A deduction for all charitable contributions of \$250 or more is disallowed unless the donor substantiates the contribution with a contemporaneous written acknowledgement of the contribution by the donee organization.

Donor Substantiation Requirements (cont'd)

- Written Acknowledgement. It is the donor's responsibility to request the required substantiation from the donee organization. There is no obligation on the donee organization's part to record or report this information to the IRS on the donor's behalf.

Donor Substantiation Requirements (cont'd)

- Form of Acknowledgement. There is no prescribed format for the contemporaneous written acknowledgement. Letters, postcards, emails or computer-generated forms may be acceptable. In addition, a donee organization may prepare a separate acknowledgement for each contribution, or may provide donors with periodic or annual acknowledgements.

Donor Substantiation Requirements (cont'd)

- Content of Acknowledgement. A written acknowledgment must contain the following specific information:
 1. The name of the organization;
 2. The amount of cash contributed and a description (but not the value) of any property contributed other than cash;
 3. Whether the donee organization provided any goods or services in consideration, in whole or in part, for the contribution; and
 4. If goods or services were provided to the donor, a description and “good faith estimate” of the value of any goods or services provided (unless the goods and services have an insubstantial value and the contribution is in excess of \$250).

Donor Substantiation Requirements (cont'd)

- Timing. An acknowledgment will be considered “contemporaneous” if the donor receives the acknowledgment on or before the earlier of (1) the date the donor files the income tax return claiming the deduction, or (2) the due date, including extensions, for filing the return.

Quid Pro Quo Contributions

- A quid pro quo contribution is a payment made partly as a contribution to the donee organization and partly as a purchase of goods or services provided by the donee organization. A Section 501(c)(3) organization is **required** to provide a written statement to donors who make quid pro quo contributions in excess of \$75.
- **EXAMPLE:** Charity has a fund-raising dinner. Donor pays Charity \$100 and receives a dinner valued at \$40. Only \$60 of the \$100 contribution is eligible for a charitable contribution deduction. The entire \$100 contribution, however, is treated as a quid pro quo contribution, and the donee organization must inform the donor that only \$60 is deductible as a charitable contribution.

Qualified Sponsorship Payments

Unrelated Business Income Tax

- While a Section 501(c)(3) organization is exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986, as amended, it is nevertheless subject to the unrelated business income tax (“UBIT”).

Qualified Sponsorship Payments

Unrelated Business Income Tax

- A Section 501(c)(3) organization's net income may be subject to UBIT at regular corporate income tax rates to the extent that:
 - 1) it is income from trade or business;
 - 2) such trade or business is regularly carried on by the organization; and
 - 3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt function.

Qualified Sponsorship Payments

Section 513(i) offers a safe harbor that provides that the term “unrelated trade or business” does not include the activity of soliciting and receiving “qualified sponsorship payments,” defined as follows:

The term “qualified sponsorship payment” means any payment made by any person engaged in a trade or business with respect to which there is no arrangement or expectation that such person will receive any **substantial return benefit other than the use or acknowledgement of the name or logo** (or product lines) of such person’s trade or business in connection with the activities of the organization that receives such payment. Such use or acknowledgement does not include **advertising** such person’s products or services (including messages containing qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use such products or services).

Qualified Sponsorship Payments (cont'd)

- Use or Acknowledgment. A substantial return benefit does not include the use or acknowledgment of the name or logo (or product lines) of the payor's trade or business in connection with the activities of the exempt organization.
- Use or acknowledgment does not include advertising, but may include the following: (1) exclusive sponsorship arrangements, (2) logos and slogans that do not contain qualitative or comparative descriptions of the payor's products, services, facilities or company, (3) a list of the payor's locations, telephone numbers, or Internet address, (4) value-neutral descriptions, including displays or visual depictions, of the payor's product-line or services, and (5) the payor's brand or trade names and product or service listings.

Qualified Sponsorship Payments (cont'd)

- Substantial Return Benefit. “Substantial return benefit” means any benefit other than: (1) goods, services or other benefits of insubstantial value that are disregarded; or (2) a use or acknowledgment.
- Benefits provided to the payor or persons designated by the payor may include: (1) advertising; (2) an exclusive provider arrangement; (3) goods, facilities, services or other privileges, and (4) exclusive or nonexclusive right to use an intangible asset (e.g., trademark, patent, logo, or designation) of the exempt organization.

Qualified Sponsorship Payments (cont'd)

- Substantial Return Benefit. The fair market value of any substantial return benefit provided as part of a sponsorship arrangement is the price at which the benefit would be provided between a willing recipient and a willing provider of the benefit, neither being under any compulsion to enter into the arrangement, and both having reasonable knowledge of relevant facts, and without regard to any other aspect of the sponsorship arrangement.
- The tax treatment of a payment that is not a qualified sponsorship payment is evaluated under the general principles of the unrelated business income tax, i.e., whether the income is from a regularly conducted trade or business that is unrelated to the organization's exempt purposes.

Qualified Sponsorship Payments (cont'd)

- Substantial Return Benefit examples:
 - Call to Action: “Visit our sponsor today.”
 - One commentator warns – “A thank-you message mentioning that each purchase of the sponsor’s product benefits the charity can be viewed as an inducement to purchase.”
 - Endorsements.
 - Tickets to an event.

Qualified Sponsorship Payments (cont'd)

- Advertising. The term advertising means any message or other programming material which is broadcast or otherwise transmitted, published, displayed or distributed, and which promotes or markets any trade or business, or any service, facility or product.
- Advertising includes messages containing qualitative or comparative language, price information or other indications of savings or value, an endorsement, or an inducement to purchase, sell, or use any company, service, facility or product.
- A single message that contains both advertising and an acknowledgment is advertising.

Qualified Sponsorship Payments

- Allocation. If a sponsorship payment made to a tax-exempt organization entitles the sponsor to both product advertising and the use or acknowledgment of the sponsor's name or logo by the organization, then the unrelated business income tax does not apply to the amount of the payment that exceeds the fair market value of the product advertising provided to the sponsor.
- If there is an arrangement or expectation that the payor will receive a "substantial return benefit" with respect to any payment, then only the portion, if any, of the payment that exceeds the fair market value of the substantial return benefit is a qualified sponsorship payment.
 - If the exempt organization does not establish that the payment exceeds the fair market value of any substantial return benefit, however, then no portion of the payment constitutes a qualified sponsorship payment.

Qualified Sponsorship Payments

Allocation Example:

- N, a hospital, organizes an exhibition and receives a large payment from a corporation to help fund the exhibition. N recognizes the corporation's support by using the corporate name and established logo in materials publicizing the exhibition, including banners, posters, brochures and public service announcements. N also hosts a dinner for the corporation's executives. The fair market value of the dinner exceeds the amount that would allow it to be disregarded. N's use of the corporate name and logo in connection with the exhibition would constitute acknowledgment of the sponsorship. However, the dinner for corporate executives is a substantial return benefit. Only that portion of the corporation's payment, if any, that N can demonstrate to exceed the fair market value of the dinner for the corporation's executives is a qualified sponsorship payment. Reg. 1.513-4(f) *Ex. 2*.

State Charitable Solicitation Rules

- Most U.S. states have laws regulating the solicitation of funds for charitable purposes. These laws generally require organizations to register with a state agency before contributions can be solicited in the state by or on behalf of the charity. Some states also require charities, once registered, to re-register annually and/or file an annual financial report to the state agency in order to continue soliciting contributions in that state. Certain types of organizations (e.g., nonprofit hospitals) are exempt from these requirements in some states.

State Charitable Solicitation Rules (cont'd)

- Some state laws also impose additional requirements on fundraising activities involving paid solicitors, fundraising counsel and commercial co-venturers.
 - Commercial co-venturer – A person or business that, for profit, conducts a charitable sales promotion on behalf of a charitable organization, in which a portion of the proceeds benefit, in whole or in part, a charitable organization or purpose.
 - Charitable sales promotion – Any advertising or sale conducted by a person who represents that the purchase or use of goods or services offered by the person will benefit, in whole or in part, any charitable organization or charitable purpose.¹

¹ Definition under Ohio Revised Code.

State Charitable Solicitation Rules (cont'd)

The legal requirements imposed by these statutes include:

- A written contract between the charitable organization and the commercial co-venturer.
 - Sometimes the state requires that certain provisions be included in the contract (e.g., a description of the goods or services to be offered, the geographic area, the contract dates, the manner in which the charitable organization's name will be used, provisions final accounting, and the date and manner in which the charitable organization will receive its benefit).
- The charitable organization must file a copy of the contract prior to the charitable sales promotion.

State Charitable Solicitation Rules (cont'd)

- Several states require registration and bonding of the commercial co-venturer.
- The commercial co-venturer must keep a copy of its final accounting.
- Some states require disclosure statements to be included in the advertising.

The penalties for violating charitable solicitation laws vary from state to state, but can include significant fines and even criminal penalties.

State Charitable Solicitation Rules (cont'd)

What is not a charitable solicitation?

- Donation campaigns (round up your purchase and it will be donated to charity)
- Third party fundraising event (volunteer hosted party to benefit a charity)



Charitable Gaming

- R.C. 2915.02, which establishes the criminal offense of gambling, provides in relevant part as follows:
 - A. No person shall do any of the following:
 - * * *
 - 2) Establish, promote, or operate or knowingly engage in conduct that facilitates any **game of chance** conducted for profit or any **scheme of chance**;
 - * * *
 - C. This section does not prohibit conduct in connection with gambling expressly permitted by law.

Charitable Gaming (cont'd)

- “**Scheme of chance**” means a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit.
 - No skill involved.
- No statute permits a charitable organization to conduct any **scheme of chance**.

Charitable Gaming (cont'd)

- **“Game of chance”** means poker, craps, roulette, or other game in which a player gives anything of value in the hope of gain, the outcome of which is determined largely by chance, but does not include bingo.
 - Some skill involved.
- **“Game of chance conducted for profit”** means any game of chance designed to produce income for the person who conducts or operates the game of chance, but does not include bingo.

Charitable Gaming (cont'd)

- R.C. 2915.02(D) permits a charitable organization to conduct **games of chance** under the following circumstances:
 - a) The games of chance are not craps for money or roulette for money.
 - b) The games of chance are conducted by a charitable organization that is, and has received from the internal revenue service a determination letter that is currently in effect, stating that the organization is, exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code.

Charitable Gaming (cont'd)

- c) The games of chance are conducted at festivals of the charitable organization that are conducted not more than a total of five days a calendar year, and are conducted on premises owned by the charitable organization for a period of no less than one year immediately preceding the conducting of the games of chance, on premises leased from a governmental unit, or on premises that are leased from a veteran's or fraternal organization and that have been owned by the lessor veteran's or fraternal organization for a period of no less than one year immediately preceding the conducting of the games of chance.

Charitable Gaming (cont'd)

- Raffle. Raffle is defined as a form of bingo in which the one or more prizes are won by one or more persons who have purchases a raffle ticket. The one or more winners of the raffle are determined by drawing a ticket stub or other detachable section from a receptacle containing ticket stubs or detachable sections corresponding to all tickets sold for the raffle.

R.C. 2915.01

Charitable Gaming (cont'd)

- Raffles. A section 501(c)(3) organization may conduct a raffle to raise money for a person or entity and does not need a license to conduct bingo in order to conduct a raffle drawing that is not for profit if the person or entity is any of the following:
 - a) Exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3) of the Internal Revenue Code;
 - b) A school;
 - c) Exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(4), 501(c)(6), 501(c)(7), 501(c)(8), 501(c)(10), or 501(c)(19) of the Internal Revenue Code.
 - 50% of net profit must be distributed to a charitable purpose or the government.

R.C. 2915.092

Charitable Gaming (cont'd)

- Bingo.
 - A. No person, except a charitable organization that has obtained a license pursuant to section 2915.08 of the Revised Code, shall conduct or advertise bingo. This division does not apply to a raffle that a charitable organization conducts or advertises.
 - B. Whoever violates this section is guilty of conducting illegal bingo, a felony of the fourth degree.

R.C. 2915.07



QUESTIONS?





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