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strict compliance required in order to secure charitable deduction

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When a taxpayer contributes $250 or more to a charitable organization, in order for the taxpayer to claim an income tax charitable deduction the organization must provide the taxpayer with a contemporaneous written acknowledgment of the gift. I.R.C. § 170(f)(8)(A). The acknowledgment must include (i) the amount of cash and a description (but not the value) of any property other than cash contributed, (ii) an explicit statement of whether the donee organization provided any goods or services in consideration for part or all of the gift, and (iii) a description and good faith estimate of the value of the goods or services referred to in clause (ii), or if such goods and services consist solely of intangible religious benefits, a statement to that effect. I.R.C. § 170(f)(8)(B).

The following recent cases have confirmed the need for strict compliance with the Internal Revenue Code (the "Code") in connection with securing the charitable deduction.

Izen v. Commissioner, 38 F.4th 459 (5th Cir. 2022). Taxpayer contributed a 50% interest in a private jet to the Houston Aeronautical Heritage Society and claimed a deduction of $338,080, which was disallowed. Taxpayer's income tax return did not include a contemporaneous written acknowledgment of the gift. Taxpayer subsequently obtained and filed an acknowledgment of the gift, but the Fifth Circuit found it was not contemporaneous and lacked a statement about whether donee provided goods or services in consideration for the gift. The taxpayer argued substantial compliance. The court said that while substantial compliance may suffice to meet the requirements imposed by the Treasury, it does not satisfy requirements imposed by the Code.

Albrecht v. Commissioner, T.C.M. (RIA) 2022-53. In this case, the taxpayer claimed an income tax deduction of $463,676 for 120 items of jewelry she donated to the Wheelwright Museum of the American Indian in Santa Fe, New Mexico. Unfortunately, while the taxpayer did obtain contemporaneous written acknowledgment of the gift, the acknowledgment did not make clear whether the museum provided any goods or services in exchange for the donation. Hence the court found that while taxpayer had substantially complied with Code, substantial compliance, "unfortunately for petitioner, does not satisfy the strict requirements of section 170(f)(8)(B)."

Keefer v. United States, 2022 WL 2473369 (N.D. Tex. July 6, 2022)(slip op.). This case is a reminder that when a contribution is made to a donor advised fund ("DAF"), there are additional requirements in that the acknowledgment must include a statement by the DAF's sponsoring organization that the organization has "exclusive legal control" over the assets contributed to the DAF. I.R.C. § 170(f)(18)(B). In *Keefer*, the court held that substantial compliance did not support the charitable deduction.

For charities and their donors, the message of these cases is clear: Substantial compliance is not sufficient! Charitable organizations should be scrupulous in issuing contemporaneous written acknowledgments of gifts and should ensure the acknowledgments comply with the applicable Code sections. And taxpayers making large donations should be rigorous in obtaining an appropriate written acknowledgment from the charity at the time of making the gift.

increases in transfer tax exemptions for 2024

Anne Marie Robbins, Esq.

The Federal Tax Cuts and Jobs Act of 2017 ("TCJA") amended section 2010(c)(3) of the Internal Revenue Code (the "Code") to provide that, for decedents dying and gifts made after December 31, 2017 and before January 1, 2026, the basic exclusion amount (BEA) and Generation-Skipping Transfer Tax ("GST") exemptions would increase to $10 million as adjusted for inflation. On January 1, 2026, these exemptions will revert to $5 million (the pre-TCJA figure), adjusted for inflation. The inflation adjustments over the years since 2018 have resulted in BEA and GST Exemptions of $12,920,000 in 2023.

On November 9, 2023 the IRS issued Revenue Procedure 2023-34 setting forth the inflation adjusted transfer tax exemptions for 2024. The BEA will be $13,610,000—an increase of $690,000. The increase means that in 2024, an individual may make gifts during life or at death totaling $13,610,000 without incurring gift or estate tax; a married couple will be able to transfer $27,220,000 of assets free of transfer taxes. The GST Exemption under section 2631 of the Code will also increase to $13,610,000.

The annual gift tax exclusion provided by Code section 2503 will increase in 2024 to $18,000 per donee (or $36,000 if spouses elect gift-splitting).

The gift tax annual exclusion for gifts to non-citizen spouses as set forth in Code sections 2503 and 2523(i)(2) will increase to $185,000.

The larger exemptions in 2024 (and likely larger ones in 2025) represent an opportunity for those who have made full use of their exemptions to date, because even a taxpayer who has fully used the BEA in sheltering lifetime gifts will be able to give additional amounts free from transfer taxes over the next two years.

Those who have made large gifts to irrevocable trusts or outright to descendants should consider additional gifts in 2024 to take advantage of the increases in the BEA and the GST Exemption. To others who perhaps have been considering making gifts before the planned reductions of the exemptions in 2026, we recommend consulting your estate planning attorney about strategies that will secure the benefit of the larger estate, gift and GST exemptions before they sunset at the end of 2025.

corporate transparency act

Monica Vir, Esq.

In an effort to combat money laundering and the funding of terrorism in the United States, the U.S. Department of Treasury has implemented the Corporate Transparency Act ("CTA"), which was enacted as part of the Anti-Money Laundering Act of 2020. The CTA is effective January 1, 2024 and will require qualifying companies to report and file certain information with the Financial Crimes Enforcement Network ("FinCEN"). FinCEN plans to store this information in a secure nonpublic database called the Beneficial Ownership Secure System ("BOSS").

The CTA requires entities qualifying as "reporting companies" to report certain information to FinCEN. Reporting companies are domestic corporations, limited liability companies, or other similar entities (or foreign entities that have filed to do business in the U.S.). The CTA specifies 23 types of entities that are exempt from reporting requirements, which generally includes entities that are already subject to substantial Federal or State regulations, entities that are already required to report information to a governmental authority, or large reporting companies. A large reporting company is one that has more than 20 employees, more than $5,000,000 in gross receipts or sales as reflected in the previous year's federal tax return, and a physical presence in the U.S. **If an entity does not qualify as a large reporting company, it will have to report to FinCEN information regarding the company itself, its beneficial owners (and those who have substantial control over the entities), and the company applicant (a "BOI Report").** This information includes legal names, addresses, employer identification numbers, social security numbers, dates of birth, and copies of identification documents (e.g., driver's license, passport). The CTA further specifies who is a "beneficial owner" and what it means to exert "substantial control."

Entities formed or incorporated before January 1, 2024 have a full year to file the initial BOI report. Entities formed or incorporated after January 1, 2024 have only 30 days after their formation or incorporation to file the initial BOI Report. Reporting companies are also responsible for updating and correcting information reported to FinCEN within 30 days after the report that contained outdated or inaccurate information was submitted. Companies can face penalties of fines (up to $10,000) and/or up to 2 years of imprisonment for failing to report, or for reporting inaccurate or incomplete information. We encourage those who may not qualify for an exemption to contact us for more information.

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