

Charitable Contributions New Tax Form Coming to Substantiate Charitable Contributions



BNA Snapshot

What Happened: IRS releases proposed rules on the substantiation requirements for charitable contributions.

What It Means: Charities can opt to file an upcoming form with the IRS and the donor to substantiate donor charitable contributions.

By [Diane Freda](#)

Sept. 16 — New IRS guidance on the substantiation requirements for charitable contributions are aimed at foreclosing the possibility that organizations will file amended Form 990's to document their contributions.

The proposed rules, released Sept. 16, said that some taxpayers under examination have argued that a failure to comply with the contemporaneous written acknowledgement (CWA) requirements can be cured if the organization to whom the donation is made files an amended Form 990, Return of Organization Exempt from Income Tax, that includes the contribution.

However, the Internal Revenue Service and Treasury Department said this is not the case. The agencies have said the Form 990 is not suitable for donee reporting, and that they plan to develop an information return specifically for that use.

Backstop to CWA

“They want to foreclose the argument that donors have made that an amended Form 990 filed by the charity two or three years after the fact could be sufficient substantiation for a gift,” Chip Watkins, an attorney with Webster, Chamberlain & Bean LLP, told Bloomberg BNA Sept. 16.

Currently, when charities get contributions of money or property, they send a letter to the donor substantiating the amount of their contribution. The new rules would allow the donor to instead rely on a filing made by the charity that is submitted both to the IRS and the donor, Ofer Lion, partner with Seyfarth Shaw LLP, told Bloomberg BNA Sept. 16.

“It's a backstop,” Lion said. “If the donor loses the form and there is an audit four years later challenging their deduction for the contribution and they can't find their contemporaneous written acknowledgement, the IRS can go into its own records to find a substantiation.”

Reporting on the new form isn't mandatory for charities, IRS said. However, it could prove difficult for the donor if years later, when he or she is audited, the charity can't find the acknowledgement letter, Lion said.

No One Will Use It

While Lion said the new procedure is probably a good safety measure for donors, Watkins said the new form is unnecessary.

“No charity is ever going to elect to file a donee information return,” he said. “Why would they, they already issue receipts.” Those receipts are often used as a tool to solicit more money from donors, he said.

In addition, he said the form would require charities to collect the donors' taxpayer identification number, which they don't typically do now. That could create privacy issues if the organization is ever hacked, he said.

Watkins said even though the form will be elective, since there are no regulations existing on the matter now, taxpayers won't be able to turn to amended Form 990s to substantiate their donations later, because the IRS will have on record what the appropriate donee information is—as opposed to having nothing on record now.

He called it “a stupid idea,” since the IRS isn't losing arguments related to substantiation in court. Until they do, there is no need for these regulations, Watkins said.

The IRS should be using its scant resources for other things, he said.