

**Legislative Recommendation #58****Modify the Requirement That Written Receipts Acknowledging Charitable Contributions Must Pre-Date the Filing of a Tax Return****SUMMARY**

- *Problem:* To claim a charitable contribution, a taxpayer must obtain a contemporaneous written acknowledgment (CWA) that states the amount of cash and a description of any property contributed, whether any goods or services were received in exchange, and a description and estimate of the value of any such goods or services. The CWA must be received prior to the date of filing the return or the due date of the return, whichever is earlier. This is a strict requirement with no exceptions. If taxpayers do not obtain a CWA prior to the filing date or due date, they are not eligible for the deduction, even if they made the contribution and can otherwise substantiate it.
- *Solution:* Eliminate the “contemporaneous written acknowledgment” requirement and replace it with an “adequate written documentation” requirement.

**PRESENT LAW**

IRC § 170(a) authorizes deductions for charitable contributions made in a taxable year. IRC § 170(f)(8) disallows charitable contribution deductions over \$250 unless the taxpayer substantiates the contributions with a CWA of the contribution from the donee organization. The CWA must be received before the earlier of the date on which the tax return is filed or the date on which the tax return is due.<sup>1</sup> The acknowledgment must include the following:

- (i) The amount of cash and a description (but not value) of any property other than cash contributed.
- (ii) Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).
- (iii) A description and good-faith estimate of the value of any goods or services referred to in clause (ii) or, if such goods or services consist solely of intangible religious benefits, a statement to that effect.

The CWA does not need to take any particular form, but the requirement for the content and timing is strict.<sup>2</sup> For purposes of the CWA, substantially complying with the rules is not enough. The law is rigid and does not permit the IRS or judges to exercise discretion.<sup>3</sup>

**REASONS FOR CHANGE**

The strict CWA requirement of IRC § 170(f)(8) harms taxpayers and tax-exempt organizations that are trying to do the right thing but may not be aware of the exact legal requirements.

*Example:* Assume a taxpayer contributes \$1,000 to a school’s Parent Teacher Association (PTA). She receives a receipt at the time of donation showing the amount given. At the time she files her return, she has not received a letter from the PTA acknowledging the \$1,000 donation and stating that no goods or services were provided in consideration for the \$1,000 donation. She files her tax return claiming

<sup>1</sup> IRC § 170(f)(8)(C).

<sup>2</sup> See *Albrecht v. Commissioner*, T.C. Memo. 2022-53. This is a case where the Tax Court denied taxpayer’s claimed charitable contributions solely because the written acknowledgment was not contemporaneous. The taxpayer’s good faith attempt to substantially comply with the Internal Revenue Code by executing a deed with the donee organization for contribution of property did not satisfy the strict contemporaneous written acknowledgment requirement.

<sup>3</sup> *15 W. 17th St. LLC v. Commissioner*, 147 T.C. 557 (2016).

a charitable contribution deduction, unaware of the CWA rule. Even if she has a copy of a canceled check or credit card statement and even if she receives an acknowledgment from the PTA the day after she files her return confirming the contribution and provides this documentation to the IRS, she will be ineligible for the charitable deduction. If she were to contest this outcome in the Tax Court, the judge would not have the discretion to allow the deduction, even if the evidence conclusively showed the contribution was made and no goods or services were provided in exchange.

This is a trap for the unwary and has the potential to affect a large number of taxpayers. For tax year 2020, 11,785,575 individual income tax returns claimed charitable contributions over \$250.<sup>4</sup> Of that total, 10,394,676 reported cash donations.<sup>5</sup>

In other contexts, Congress has acknowledged that the “contemporaneous” recordkeeping requirement is overly burdensome on taxpayers. In 1984, Congress added a contemporaneous recordkeeping requirement to IRC § 274 (requiring contemporaneous substantiation of entertainment expenses) due to concern about significant overstatements of deductions. Yet by 1985, it concluded the contemporaneous recordkeeping requirement “sweeps too broadly and generally imposes excessive recordkeeping burdens on many taxpayers.”<sup>6</sup> Congress repealed the “contemporaneous” requirement and replaced it with an “adequate documentation” standard.<sup>7</sup> Nowhere else in the IRC (the Code) is the term “contemporaneous” used with such a strict effect. Other references in the Code use “reasonably contemporaneous” or “substantially contemporaneous,” providing a more flexible approach for those administering the Code to get to the right result.<sup>8</sup>

Removing the “contemporaneous written acknowledgment” requirement and replacing it with an “adequate written documentation” requirement would still require taxpayers to provide proof to substantiate their deductions, but it would reduce taxpayer burden and give the IRS common sense flexibility in administering the law. Notably, it would leave intact the provisions requiring reporting on whether any goods or services were provided in exchange for the donation. This would address Congress’s core concern, as described in the legislative history, about *quid pro quo* contributions.<sup>9</sup>

## RECOMMENDATIONS

- Remove the words “contemporaneous written acknowledgment” from IRC § 170(f)(8), 170(f)(12), and 170(f)(18) and replace them with “adequate written documentation.”<sup>10</sup>
- Remove IRC § 170(f)(8)(C).

4 IRS, Individual Return Transaction File, IRS Compliance Data Warehouse (Sept. 8, 2022).

5 *Id.*

6 H.R. REP. NO. 99-23 (Apr. 2, 1985); H.R. REP. NO. 99-34 (Apr. 2, 1985).

7 IRC § 274(d) requires substantiation “by adequate records or by sufficient evidence corroborating the taxpayer’s own statement...”

8 See IRC §§ 1258, 1260, and 4975.

9 H.R. REP. NO. 103-213, at 563-564 (Aug. 4, 1993).

10 Conforming changes may be required in IRC §§ 2522 and 6720.