

Legislative Recommendation #59**Remove the Requirement That Written Receipts Acknowledging Charitable Contributions Must Be Contemporaneous****SUMMARY**

- *Problem:* To claim certain types of charitable contributions, a taxpayer must obtain a contemporaneous written acknowledgment from the donee organization within a short time after making the contribution. The timing requirement is strict, with no exceptions. Taxpayers who do not obtain the written acknowledgment by the due date are not eligible for the deduction, even if they made the contribution and can otherwise substantiate it.
- *Solution:* Eliminate the requirement that the written acknowledgment must be “contemporaneous.”

PRESENT LAW

IRC § 170(a) authorizes deductions for charitable contributions made in a taxable year, but deductions for some types of contributions are disallowed unless taxpayers substantiate them with a contemporaneous written acknowledgment from the donee organization that includes specific information. For the acknowledgment to be “contemporaneous,” the donee must provide it to the taxpayer by a set deadline. If the acknowledgment is sent late or if a timely but defective acknowledgment is not supplemented with needed information until after the deadline, the taxpayer cannot take the deduction, regardless of whether the taxpayer otherwise qualifies for it.¹

IRC § 170(f)(8)(A) disallows charitable contribution deductions of \$250 or more unless the taxpayer substantiates the contributions with a contemporaneous written acknowledgment from the donee organization. Under IRC § 170(f)(8)(C), to be “contemporaneous,” the acknowledgment must be received on or before the earlier of the date on which the tax return is filed or the date on which the tax return is due (including extensions).

Under IRC § 170(f)(8)(B), the acknowledgment must include the following information:

- The amount of cash and a description (but not value) of any property other than cash contributed.
- Whether the donee organization provided any goods or services in consideration, in whole or in part, for any property described in clause (i).
- 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.

“Contemporaneous” timing requirements are also found in IRC § 170(f)(12), relating to contributions of vehicles, and IRC § 170(f)(18), relating to contributions to donor advised funds.

REASONS FOR CHANGE

Strict contemporaneous timing requirements harm taxpayers and tax-exempt organizations that make a technical mistake in their written acknowledgment or that provide some necessary information only after the statutory deadline has passed.

¹ See, e.g., *Albrecht v. Comm’r*, T.C. Memo. 2022-53, n.4 (where a timely obtained written acknowledgment was found insufficient to meet the content requirements for substantiation under IRC § 170(f)(8)(B), the court could not consider additional documentation provided after the contemporaneous recordkeeping deadline that supplied the missing information).

Example: Assume a taxpayer contributes over \$250 to a school's Parent Teacher Association (PTA). She receives an acknowledgment letter from the PTA thanking her for the donation and stating the amount, but the letter fails to state that no goods or services were provided in consideration for the donation. Even if she receives a supplemental acknowledgment from the PTA one day after the statutory deadline in IRC § 170(f)(8)(C), confirming that no goods or services were provided, and she provides this additional 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.²

In another context, Congress has acknowledged that a “contemporaneous” recordkeeping requirement was overly burdensome on taxpayers. In 1984, Congress added a contemporaneous recordkeeping requirement in IRC § 274(d) (requiring contemporaneous substantiation of certain expenses, including the business use of vehicles) due to concern about significant overstatements of deductions. Yet by 1985, it concluded that the contemporaneous recordkeeping requirement “sweeps too broadly and generally imposes excessive recordkeeping burdens on many taxpayers.”³ Congress repealed the “contemporaneous” requirement while keeping rules on the content of the information that must be substantiated.⁴ IRC § 274(d) requires a taxpayer to substantiate a claimed expense by adequate records or by sufficient evidence corroborating the taxpayer's own statement establishing the amount, time, place, and business purpose of the expense.

Removing the “contemporaneous” component of the written acknowledgment requirements in IRC § 170 would still require taxpayers to provide sufficient evidence to substantiate their deductions, but it would reduce taxpayer burden and give the IRS and courts common sense flexibility in administering the law.

RECOMMENDATIONS

- Remove the “contemporaneous” component from the written acknowledgment requirements in IRC § 170(f)(8), (f)(12), and (f)(18).⁵
- Remove IRC § 170(f)(8)(C).

² See, e.g., *Durden v. Comm'r*, T.C. Memo. 2012-140.

³ S. REP. NO. 99-23 (1985); H.R. REP. NO. 99-34 (1985).

⁴ Pub. L. No. 99-44, § 1, 99 Stat. 77 (1985).

⁵ Conforming changes may be required in IRC §§ 2522 and 6720.