Fundraising Events and Cause-Related Marketing

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IRS Circular 230 Disclosure

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EXAMPLE
SHAKESPEARE ON SKIS
Example – SOS

What issues are raised in this example:

• Are there “Quid Pro Quo” elements in any of the payments or gifts made to SOS with respect to the dinner?

• What is deductible to dinner patrons?

• What is deductible to donors of auction items?

• What are the organizations’ requirements with respect to receipting and acknowledgement?

• Are there any issues with respect to the raffle?

• Any other issues?
Quid Pro Quo

Donor’s deduction = Value of property donated - Value of goods or services received in exchange for the gift
Quid Pro Quo

Valuing goods and services provided

• What is the *quid pro quo* element?
  – Payment made partly as a contribution and partly in consideration for goods or services provided by the charity

• Charity must provide
  – “… a good faith estimate of the value of such goods or services…”

• Exceptions for insubstantial goods or services, membership benefits, and intangible religious benefits
Quid Pro Quo

What did dinner patrons get?

- Dinner
- Drinks
- Entertainment
- Mug
- Commemorative button
Substantiation Rules

Gifts/payments of more than $75 where benefit is received by taxpayer (quid pro quo payments):

• Charity must provide a statement to taxpayer, with either the solicitation or the receipt, stating:
  – Deduction is limited to the value of amount contributed that exceeds the value of goods/services received
  – A “good faith estimate” of the value of goods or services provided to taxpayer
  – Penalty imposed upon organization for failure to provide - $10 x number of payments
    – Also donor relations issue, if donor surprised by deductibility following payment
Substantiation Rules

Contributions of cash $250 or more:

• Written acknowledgment from the charity
  – Contemporaneous – no later than date donor files their return
  – Name of organization
  – Amount of cash contribution
  – Describe goods or services provided in exchange for gift
    • If none, state, “no goods or services were provided in exchange for this gift”
    • If some, provide description and good faith estimate of value
  – If intangible religious benefits provided, statement to that effect
  – May do separate acknowledgment for each gift, or one for all gifts during year

• Failure to comply can be to the detriment of the donor
Quid Pro Quo

Tips

• Consider the context.
• Don’t say that a value is “priceless”.
• Make a few calls or search the Web. Some payments have no deductible components
• Is the good, service, or conferred benefit commercially available?
• If not generally available in a commercial transaction, are there similar or comparable goods, services, or benefits available?
  – Facility rentals
  – Services: For example, tennis lessons
  – Celebrity presence
• What if the benefit was donated?
Quid Pro Quo

• Sample Language
  – “The Internal Revenue Code provides that the amount of a contribution must be reduced by the value of goods or services received in return from the charitable organization. Based on our estimate of the value of this event, $XXX is the value of goods or services received per ticket. No portion of a raffle ticket purchase is tax deductible.”
  – Language should be customized

• Applies to solicitations with penalties imposed upon charity
Donors of Auction Items

Contributions of property of $250 or more:

- Written acknowledgment from the charity
  - Same requirements as for cash contributions plus:
  - A “reasonably sufficient” description of the property donated
    - Charity is *not* required to provide any information regarding the *value* of the property donated
  - If donor’s deduction will be $500 or more:
    - Donor must file IRS Form 8283, which includes a donee acknowledgement
  - If donor’s deduction will be $5,000 or more:
    - Donor must obtain qualified appraisal
- Except not required for publicly traded securities
- No deduction for contributions of services
- Artwork from the artist-cost of supplies
- Special rules for transportation vehicles
Auction Items

If charity disposes of contributed property, the contribution of which required a qualified appraisal, within three years of the date of the gift, it must file Form 8282

- Form 8282 must be filed within 125 days of the disposition
- Does not apply to property either consumed or disposed of in exempt purposes of organization
- Penalties imposed upon charity for failure to file
Buyers of Donation “Auction”

Contributions of *cash less than $250* where no return benefit provided:

- Taxpayer must have a cancelled check, credit card statement or
- A receipt, letter or statement from the charity including the date and amount of the contribution
- Recordkeeping requirements for donor/taxpayer

If $250 or more, provide written acknowledgement
Donations of Services (Elvis)

Volunteer Expenses

• Expenses of $250 or more must be receipted
• Taxpayer needs adequate records
• Letter from organization describes services provided and states whether any value was received in exchange for the contribution
Raffles

- Not tax deductible to purchaser
- State license may be required
- Reporting of prize required on Form W-2G if winnings $600 or more and more than 300 times the amount of wager
  - Income tax must be withheld from the winnings if the proceeds of the wager (raffle) are more than $5,000
- Withholding required at 25% (28% after 2010) from the amount of the winnings less the cost of a ticket at time of payment of prize
Raffles

• Withholding required even if prize is property
  – Some individuals will reject the prize due to inability to pay tax
  – Consider language in solicitation
  – Rate is 28% if individual pays tax and 33.33% if organization pays withholding

• Backup withholding of 28% required if no TIN

• Publication 3079 revised
Sales Tax – Fundraising Sales

- Generally sales by nonprofits are subject to sales tax, just as for other sellers
- Certain fundraising sales are exempt
  - Sales at fundraising event not taxable
    - Admission, food, meals, drinks, personal property
  - Net proceeds used exclusively for charitable, religious or educational purposes
  - Limited to 24 days per year
    - If exceed, all sales become taxable
  - Nonprofit must sponsor the event
    - Can use vendor but nonprofit must actively participate and receive entire net proceeds
- Detailed records required
  - Separate records of event, receipts, disbursements, deductions, etc. for each event
Sales Tax – Fundraising Sales

24-day rule, cautions

• Chapters
  – If not separate legal entities, may all count towards the 24-day limit

• All sales count
  – Candy sales (all days), luncheons, dinner events…
  – If third parties do events for you, they count too

• Recordkeeping crucial

Other fundraising sales exemptions

• Youth groups, senior citizen groups
• Golf tournaments
• Candy sales
Cause-Related Marketing
Cause-Related Marketing Basics

What is it?

• When a business supports a charitable cause to get its own name out

Key considerations

• Use of charitable assets
• Charitable solicitation regulations
• Income Tax considerations
• Sales Tax considerations
Use of Charitable Assets

Interaction with the public consistent with charitable status

- Ensure funds raised from public are in fact used for charity
- Overhead and fundraising costs are reasonable
- Charity’s name, logo, brand are used consistent with its charitable purposes

Manage private benefit to business

- Reasonable and proportional
- Charity gets reasonable return on its contributions
Charitable solicitation regulations

Most states regulate solicitation of charitable contributions in the state

- Governs the *ask*, not the *give*

Also regulate professional fundraisers

- Person who for compensation or profit
  - Solicits contributions
  - Manages, advises, consults or prepares materials for solicitation
- Commercial co-venturers or fundraising sales
- Definitions and rules vary by state

Typical requirements: Registration, reports, honesty and fair dealing
Income Tax Considerations

Unrelated business taxable income?

- If charity directly involved, but activity is not substantial related to exempt purposes

- Examples:
  - Sale of advertising
  - Sale of consumer products
  - Performance of services

- Exceptions
  - Passive royalties
  - Qualified sponsorship payments
  - Income from passive investments
  - Work performed by volunteers
  - Resale of donated goods
Income Tax Considerations

Whose income is it?

• Income attributed to party that controls it
  – Donor can only take deduction for contribution to charity

• If goal is for customers to get deduction
  – Funds must go to charity directly or business as agent
    • If agency, professional fundraiser issues
    • If agency, charity gets to control and is liable for agent’s actions

• If goal is for business to get deduction
  – Be clear in materials that customers are making purchases, not charitable donations
  – Income attributed to business, taxed as such
Sales Tax Considerations

Purchases

• Nonprofits are generally exempt from paying sales tax when purchasing goods for charitable activities
• Issue: Can business use charity’s exemption?
  – Agency issue again

Sales

• Certain fundraising sales by nonprofits also exempt
• Issue: Can cause-related marketing event fit into this exception?
  – Agency issue again
Form 990 Considerations

Core Form

• 2010 Form 990, Part V, Statements Regarding Other IRS Filings and Tax Compliance
  – Questions 1b and c regarding filing of Form W-2G
  – Questions 7a-h regarding “quid pro quo” notification and certain other contribution issues

• Schedule G, Supplemental Information Regarding Fund-raising or Gaming Activities
  – Fundraising events
  – Gaming
  – Professional fund-raising

• Schedule M, Noncash Contributions

• State Registrations – Form 990, Part VI
Links

Links

Links


Thank you!

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