Tax Exempt Organizations From Start to Finish
Handling Contributions and Tax Deductions
Handling Contributions and Tax Deductions
Types of Gifts

• Advising Clients on Accepting Money and Property
  - Responsibility of the donor to make certain that he or she receives appropriate acknowledgement from the charity
  - However, no charitable organization wants to be responsible for a donor not being able to take a charitable deduction for a gift, particularly a sizeable one
  - Type of acknowledgement depends on amount and type of property donated
Handling Contributions and Tax Deductions
Types of Gifts

• Common types of property donated
  ▪ Cash, including checks, electronic fund transfers, credit cards and payroll deductions
  ▪ Securities
  ▪ Insurance, including annuities
  ▪ Real estate, including easements and qualified conservation contributions
  ▪ Clothing and household furnishings
  ▪ Used cars, boats, airplanes
  ▪ Royalties
  ▪ Art, antiques, jewelry, various types of collections
Handling Contributions and Tax Deductions

Types of Gifts

• How does the organization respond to each of these types of gifts? Organization should provide a contemporaneous written acknowledgement for any gift, including all information required by the donor to take a charitable tax deduction, as follows:

  ▪ Names of the donee and donor
  ▪ Amount and type of gift
  ▪ Date the gift was received
  ▪ Whether the donor received a return benefit
Handling Contributions and Tax Deductions

Types of Gifts

• Potential problems for a charity/donee
  - For cash, no, unless you have reason to know it came from an illegal activity or it is large enough to endanger the organization’s determination as a publicly supported organization
  - Two potential problems with appreciated property, often stock in a publicly held company:
    - As with cash, a large enough gift to cause the charity to not be considered publicly supported
    - For private foundations which must give 5% of the value of its assets/income each year, stock in a closely held company

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Handling Contributions and Tax Deductions

Types of Gifts: Potential Problems

- Royalties, meaning the right to receive payment for use of a valuable intangible right such as a trademark or copyright, treated the same as cash
  - Production from mines, quarries, oil and gas facilities may generate unrelated business taxable income ("UBTI") if the charitable organization participates (uses its own money) in the development of the asset
Handling Contributions and Tax Deductions
Types of Gifts: Potential Problems

Historic building and façade easements and qualified conservation contributions may pose problems for the donor and raise issues for the charity

- Organization should record the deed received as quickly as possible because recordation fixes the date of the gift
- Charity must be willing to use the property for stated purpose related to its exempt purposes and be willing and able to enforce restrictions
Handling Contributions and Tax Deductions

Unanticipated Funds

• Handling Unanticipated Funds with “Facts and Circumstances” Test

  ▪ Unanticipated funds or unusual grants are generally substantial contributions/bequests large enough to endanger meeting either the 33⅓ or 10% support tests
  ▪ Repetitive contributions, therefore not unusual, and those from disqualified persons (major donors or insiders) may require organization to justify that it is publicly supported
  ▪ Other than for a new charity, the support test is a rolling 5-year average
    ▫ if contribution is excluded as unusual, it will not be counted during the rolling 5-year period

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Handling Contributions and Tax Deductions
Unanticipated Funds (cont.)

- Repeat large donors will become disqualified persons
  - Contributions from disqualified persons are counted in the numerator but not the denominator – making it much more difficult to meet either public support test
    - $15,000 unusual grant to organization receiving $5,000 in small gifts
      - Organization has received 100% public support
    - $15,000 grant from disqualified person when organization received $5,000 in small gifts
      - Organization received 25% public support
Handling Contributions and Tax Deductions
Unanticipated Funds (cont.)

• IRS considers whether the organization is organized and operated to attract public support, including:
  ▪ Whether the organization has a continuous and bona fide program for solicitation or activities designed to attract public support and sources of support
  ▪ Receiving high percentage of income from investments or endowment is fine as long as the funds being invested or the funds comprising the endowment were originally contributed by governmental units, publicly supported charities, and the general public

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Handling Contributions and Tax Deductions

Tax Deductions

- Individuals who itemize deductions (and business corporations) may deduct the value of the contribution to a charitable organization, with a number of limitations

  - Amount of the deduction will depend on:
    - Classification of the charity (publicly supported organization or private foundation) and
    - Type of property contributed.
Handling Contributions and Tax Deductions

Tax Deductions (cont.)

- For the donee, value of a contributed item is generally its fair market value
- For the donor, that is just the first step
  - Deduction for gifts of appreciated property depends on whether the asset is capital gain property or ordinary income property
    - Capital gain property: assets that have appreciated in value and been held at least 12 months so that it would result in long-term capital gain if sold by the donor
    - All other property, including short-term capital gain property is ordinary income property
Handling Contributions and Tax Deductions

Tax Deductions (cont.)

• Tax deductions for contributions are limited to a specific percentage of the donor’s adjusted gross income ("AGI")
  - Contributions to public charities and operating foundations
    - 50% of AGI for contributions of cash and ordinary income property
    - 30% of AGI for contributions of capital gain property
  - Contributions to private foundations
    - 30% of the donor’s AGI for cash and ordinary income property
    - 20% for contributions of capital gain property

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Handling Contributions and Tax Deductions
Tax Deductions (cont.)

- Carrying forward excess contributions
  - Contributions to public charities in excess of the applicable percentage of the donor’s AGI may be carried forward and deducted in returns filed for the next 5 years
  - Carry forward for private foundations is limited to gifts of cash and ordinary income property
Handling Contributions and Tax Deductions
Substantiation Requirements for Cash

• Cash gifts, regardless of amount, require written record showing donee’s name, date and amount

• Less than $250: Written record can include canceled check, bank statement, credit card statement or receipt from donee

• If contribution exceeds $75 and donor receives return benefit, statement from donee of the value of the return benefit and notice that only the excess is deductible
Handling Contributions and Tax Deductions
Substantiation Requirements for Cash (cont.)

$250 or more require:

- Receipt from donee stating amount of contribution
- Description and estimated value of any return benefit (other than intangible religious benefit)
- Receipt must state there was no return benefit, if true
- Multiple payments made on the same day are aggregated
Handling Contributions and Tax Deductions
Substantiation Requirements for Other than Cash

• Contributions of property other than cash
  ▪ Less than $250 require:
    ▪ Receipt from donee (if impractical, written record for each item)
    ▪ Name and address of donee
    ▪ Date of contribution
    ▪ Description of property
    ▪ If securities, name, type and whether publicly traded
  ▪ Contributions of $250 or more require:
    ▪ Same requirements as for a cash gift, plus description (but not value) of the contributed property
Handling Contributions and Tax Deductions
Substantiation Requirements for Other Than Cash

- **Contributions of more than $500** ($5,000 for “regular” corporations)
  - Form 8283 required with donor’s income tax return
  - Written record for each item other than publicly traded stock:
    - name and address of donee
    - date of contribution
    - description of property
    - manner and date of acquisition
    - basis of property
Handling Contributions and Tax Deductions
Substantiation Requirements for Other than Cash

- Contributions of cars, boats and airplanes with a claimed fair market value of more than $500
  - For attachment to donor’s return, donee organization must provide: Form 1098-C or other statement containing the same information, including gross proceeds from sale of vehicle
  - Donor must receive Form 1098-C or other statement within 30 days of sale of the vehicle if it was not going to be used by the donee for its exempt purposes
  - Donor should received Form 1098-C or other statement within 30 days of donation if vehicle was donated to be used by donee for its exempt purposes

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Handling Contributions and Tax Deductions
Substantiation Requirements Other than Cash

- One or more similar items of property (other than publicly traded stock) valued at more than $5,000 ($10,000 for closely held stock)
  - Form 8283, as above
  - Qualified appraisal and appraisal summary included with donor’s income tax return
  - Section B of Form 8283, signed by qualified appraiser, required for closely held stock, but no appraisal if value is $10,000 or less
Handling Contributions and Tax Deductions
Substantiation Requirements (cont.)

- Property valued at more than $500,000
  - Qualified appraisal and Form 8283 must be included with donor’s income tax return

- Building in registered historic district
  - Contribution of qualified real property interest that is an easement or other restriction on the exterior of a certified historic building is deductible if it meets the following conditions:
    - Restriction preserves entire exterior of the building (including front, sides, rear, and height) and prohibits any change inconsistent with historic character
Handling Contributions and Tax Deductions
Substantiation Requirements for Other than Cash

- Subject of written agreement between donor and donee certifying, under penalty of perjury, that the donee:
  - Is a qualified organization with a purpose of historic preservation, and
  - Has the resources to manage and enforce the restriction and a commitment to do so
  - Other specific appraisal and documentation requirements

- Deduction of more than $10,000 will not be allowed without Form 8283-V, Payment Voucher for Filing Fee Under Section 170(f)(13) and payment of a $500 filing fee
Handling Contributions and Tax Deductions
Substantiation Requirements for Other than Cash

- **Qualified Conservation Contribution**
  - Contribution of qualified real property interest to a qualified donee to be used only for conservation purposes
  - Acceptable purposes and specific documents required
  - Subject to written agreement between donor and donee, certified under penalty of perjury

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Handling Contributions and Tax Deductions
Substantiation Requirements: Penalties

• Penalties for overstating value or adjusted basis of property
  ▪ 20% of amount by which donor underpaid tax because of overstatement – if value of adjusted basis claimed on return is 150% of correct amount, and tax was underpaid by more than $5,000 because of the overstatement
  ▪ 40% of amount by which donor underpaid tax – if value of adjusted basis claimed on return is 200% or more of correct amount, and tax was underpaid by more than $5,000 because of overstatement
Handling Contributions and Tax Deductions
Recent Changes and Current IRS Focus

• Two Recent Changes

  ▪ Regulatory change of integral part test for functionally integrated Type III supporting organizations
    ▪ “Substantially all” of organization’s activities must “directly” further supported organization’s purposes
    ▪ Must maintain significant involvement in operations of one or more supported organizations and provide support on which organizations are dependent
Handling Contributions and Tax Deductions
Recent Changes (cont.)

- Transition rules allow 1 tax year to come into compliance
  - Type III support orgs in existence on 12/28/12 that met previous test for functionally or non-functionally integrated Type III support org and continue to meet those requirements will have until the first day of the organization’s 2nd tax year beginning after 12/28/12 to comply with stricter requirements
  - Beginning in the 2nd taxable year after 12/28/12 – taxable years beginning in 2014, Type III supporting organizations must comply with new rules
Handling Contributions and Tax Deductions
Recent Changes (cont.)

- Income limit on itemized deductions that took effect for tax year 2013
  - Total of charitable contribution deduction and certain other deductions may be limited if donor’s AGI is greater than:
    - $150,000 if married and filing separately,
    - $250,000 if single,
    - $275,000 if head of household, or
    - $300,000 if married and filing jointly or if a qualifying widow/widower.

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Handling Contributions and Tax Deductions
Recent Changes and Current IRS Focus

• Current Focus

  ▪ IRS appears to focusing on 2 issues affecting exempt organizations: executive compensation and unrelated business income tax

    ▪ Executive compensation

    ▪ 2008 survey of 400 colleges and universities emphasized 3 main issues:
      ▪ Colleges relying on data from institutions not similarly situated
      ▪ Compensation studies not documenting selection criteria for included schools and why deemed comparable
Handling Contributions and Tax Deductions
Current IRS Focus (cont.)

- Surveys not specifying whether amounts include only salary or other types of compensation
- IRS put out guidelines for reporting executive compensation in Part VII and Schedule J of Form 990 on March 6, 2014
- Executive Compensation Initiative – Errors and Omissions from Annual Returns by Exempt Organizations (May 3, 2013) and
- Fringe Benefits Audit Guide (02-2005) (Rev. 1/14/14) which contains 22 specific areas to be reviewed if IRS agent is reviewing a charity’s executive compensation.
Handling Contributions and Tax Deductions
Current IRS Focus (cont.)

- **Unrelated business income tax ("UBIT")**
  - April 2013, IRS released a summary of its college and university survey identifying 4 areas related to UBIT
    - Deducting expenses not connected to unrelated business activities
    - Misallocating expenses not connected to unrelated business activities
    - Improperly computing or substantiating net operating losses
    - Misclassifying activities as exempt activities or otherwise not reportable on Form 990-T
  - Too recent to have seen results of increased activity
Handling Contributions and Tax Deductions
Current IRS Focus (cont.)

- FY 2012, IRS did compliance check of 400 organizations reporting UBTI on Form 990 but not filing Form 990-T
  - IRS alleges that 140 of those allocated expenses incorrectly and therefore had delinquent Form 990-T returns
- FY 2013, IRS will also be looking at organizations consistently reporting significant gross receipts from unrelated business activities but declaring no tax due
  - Areas of greatest interest are expense allocations and consistent losses applied against income
Handling Contributions and Tax Deductions
Current IRS Focus (cont.)

- IRS challenging large charitable contributions of property
  - Unconvincing or incomplete appraisals
  - Substantial return benefits
  - Incomplete or missing contemporaneous written acknowledgement
  - May lead to reduction in deduction with possibility of penalties, or
  - If patently inadequate appraisal or failure to obtain or file proper documentation, complete loss of deduction and imposition of penalties
  - Trend appears to be IRS going after entire deduction based on defective paperwork