

Legislative Recommendation #60**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. Taxpayers who do not obtain a written acknowledgment by the deadline 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 during a taxable year. To claim a deduction of \$250 or more, however, a taxpayer must substantiate the contribution with a “contemporaneous written acknowledgment” from the donee organization, as required by IRC § 170(f)(8)(A). To be “contemporaneous,” IRC § 170(f)(8)(C) requires that the acknowledgment 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). 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 is not eligible for the deduction, regardless of whether the taxpayer otherwise qualifies for it.¹

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

- (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.

“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 acknowledgments or that provide some required or corrected information 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 that supplied the missing information because the donee organization provided it after the contemporaneous recordkeeping deadline).

Example: Assume a taxpayer contributes over \$250 to a school's Parent Teacher Association (PTA). They receive an acknowledgment letter from the PTA thanking them for the donation and stating the contribution amount, but the letter fails to state that no goods or services were provided in consideration for the donation. The taxpayer notices the omission of this language as they are preparing their tax return and asks the PTA to send them a corrected acknowledgement. If the corrected acknowledgement is provided even one day after the taxpayer files their return, they will be ineligible for the deduction. If they 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 the contemporaneous recordkeeping requirement “sweeps too broadly and generally imposes excessive recordkeeping burdens on many taxpayers.”³ Congress repealed the “contemporaneous” requirement while retaining the rules governing the content of the information that must be substantiated.⁴ IRC § 274(d) now 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.

Under similar reasoning, 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 the courts common-sense flexibility in administering the law.

RECOMMENDATION

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

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

³ S. REP. NO. 99-23, at 3 (1985); H.R. REP. NO. 99-34, at 4 (1985).

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

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