Dotting Your I’s and Crossing Your T’s in Charitable Giving
Robert H. Powell III

Although we are only halfway through this calendar year, it is not too early to start thinking about your charitable contributions and taking steps to make certain that you get the deductions you believe you are entitled to receive. Making certain all your documentation is in proper order is critical. Consider the following situation:

David and Verona Durden were very active in their church. During the year, they made contributions to the church by check or cash totaling over $25,000. The IRS audited the Durdens’ return and disallowed their claimed charitable deduction for the contributions to the church. The Durdens actually produced records of their contributions, including copies of cancelled checks and a letter from the church which acknowledged contributions from them for the donations. The letter lacked a statement, however, saying whether any goods or services had been provided in consideration for their contributions. Because the letter did not state whether goods or services had been provided, the IRS would not accept that letter on the grounds it did not satisfy the statutory requirements of §170(f)(8).

§170(f)(8) provides that any contribution of $250 or more will be disallowed unless “the taxpayer substantiates the contribution by a contemporaneous written acknowledgment by the donee organization” that spells out “[t]he amount of cash and a description (but not value) of any property other than cash contributed” and “whether the donee organization provided any goods or services in consideration, in whole or in part for” the contribution.

The Durdens then obtained a second letter from the church acknowledging the contributions and stating that no goods or services had been provided to the Durdens in exchange for the contributions. Unfortunately for them, this letter was also rejected by the IRS as not having been contemporaneously issued. §170(f)(8)(C) provides that an acknowledgment will be considered “contemporaneous” if obtained by the taxpayer on or before the date the return is filed or the due date (including extensions) for filing the return.

The matter went to the Tax Court and in May of 2012 the Court upheld the service’s determination of a deficiency in the amount of $7,552 and an accuracy related penalty of over $1,500. The Durdens did not have all their i’s dotted or t’s crossed and it was a costly mistake.

Because the IRS interprets these requirements strictly, you must make sure that the charities to which you make contributions not only provide you with written acknowledgement for all contributions of $250 or more but that the statements are received at least by the time you file your return and that the statements provide that no goods or services were received by you in consideration of the contributions.

Robert H. Powell III is of counsel in the firm’s Norfolk office where his practice focuses on trust and estate planning, real estate, and corporate transactions. He received his B.S. and LL.B., cum laude, from Washington & Lee University. Bob is AV® rated by Martindale Hubbell and has been designated an Accredited Estate Planner by the National Association of Estate Planning Councils. Bob is also a member of the Legislative Committee of Wills, Trusts and Estates Section of the Virginia Bar Association. Active in the community, Bob’s current civic involvement includes service on the Hampton Roads Estate Planning Council, Rotary Club of Norfolk, Bank of Hampton Roads, and Foundry United Methodist Church.

Congratulations to Robert C. Goodman, Jr.

Each year the Hampton Roads Community Foundation’s Barron F. Black Community Builder Award honors a professional advisor who is a community-minded, generous person who also encourages his or her clients to be generous to the community. This year’s recipient is Robert C. Goodman, Jr., a partner in the Norfolk office of Kaufman & Canoles. Rob has long encouraged people in Hampton Roads to work with community foundations rather than starting their own private foundations. He was a founding director of the Virginia Beach Foundation and served as board chair for four years. Many congratulations to Rob on receiving this year’s award.

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