



Is Your Donation Deductible?

An Orthodox Jew's Guide to the Laws of Charitable Giving - Part One

By Judah I. Kupfer, Esq.

Over the past several months, Agudath Israel of America has initiated the Dina D'Malchusa Dina series of legal seminars project. Responding to the timely need in the Orthodox Jewish community for substantive guidance regarding a range of legal and tax-related issues faced by yeshivos, shuls, gemachs and the general public, Agudath Israel stepped up to fill that need by coordinating this initiative.

To date, Agudath Israel has presented close to ten seminars in various locations across the United States, including programs in Boro Park, Chicago, Cleveland, Flatbush, Lakewood and Los Angeles, and more are scheduled to come. The initiative has been praised by many as long overdue. It has served as a means of educating the greater Orthodox community regarding the intricacies of complicated and often misunderstood legal concepts and has brought about a keen awareness of pertinent rules and laws vital to ensure that organizations and individuals act in compliance with state and federal law. The deductibility of charitable contributions from income tax is one such topic. Below is an article that seeks to clarify the rules of charitable contributions and many of its applications and nuances.

INTRODUCTION

A feeling of satisfaction accompanies charitable giving. That feeling is amplified when it comes with actual savings in the form of a tax deduction. Last year, charitable giving in the United States was estimated to be in excess of \$300 billion and it is safe to say that the deductibility of charitable contributions has played a key role in increasing the amount people give. By allowing a tax deduction for charitable contributions, the government indirectly subsidizes private philanthropy. While some critics have argued against the idea of the government providing such a subsidy, many people regard activities of charities as socially desirable and appreciate this tax incentive.

It is important to note, however, that not just anything given to further a charitable purpose qualifies for a tax deduction. Congress along with the courts and the Internal Revenue Service have articulated rules regarding which contributions will be deductible. What follows is a synopsis of the elements required for a deductible charitable contribution and some

common applications to Orthodox Jews in the context of schools, *shuls*, *kollelim*, *gemachs* and other charitable organizations. Next week, Part Two will follow with additional illustrations of these principles.

As many of the illustrations are very fact-specific and can change with variations of the smallest details, the reader is cautioned to seek out professional tax advice in connection with his or her specific circumstances, to ensure the proper application of these rules and to be apprised of the many additional rules and nuances that didn't make it into this article.

Do you need the deduction?

Much value is placed on whether one can deduct a charitable contribution. Often, though, a donor won't end up utilizing that deduction. When calculating taxable income, while certain deductions are available to all, others are limited to taxpayers who elect to itemize their deductions instead of taking the standard deduction. The taxpayer generally chooses whichever method saves him more. The charitable contribution deduction is an example of an itemized deduction (also referred to as a "below-the-line" deduction). For 2010, the taxpayer's itemized expenses for the year need to exceed \$11,400 on joint returns (\$5,700 for single persons) for it to be worthwhile to itemize. Last year, it is estimated that nearly 70% of all taxpayers in the U.S. elected the standard deduction instead of itemizing. Thus, one is encouraged to review past tax returns to gain perspective and consider whether a deduction will be useful.

What constitutes a deductible charitable contribution?

At the outset, it is important to recognize certain key elements that are required for a contribution to be deductible. First, the donor must make the donation with "donative intent." As it sounds, the donor must intend to make a donation.

Second, the donor may neither receive a benefit in return for his donation nor may he even expect to receive one. The courts have said that donations must be made with "detached and disinterested generosity" - meaning, a donation may not be given in exchange for a past benefit nor with the expectation of a future benefit. To the extent that the donor does in fact receive a benefit in return for his donation, the value of the benefit may not be deducted. (There are exceptions for religious and incidental benefits which will be explained below.) Thus, if the value of the benefit received is equivalent to the donation, the donor may not deduct that donation at all.

Third, a deductible donation is one that is given to a "qualified charitable organization." Most *shuls* and 501(c)(3) organizations are considered qualified charitable organizations. Through this requirement, Congress has consciously decided to exclude donations made to individuals, no matter how worthy the individual's situation may be. Additionally, a qualified charitable organization must be a domestic U.S. organization, i.e., an organization organized under the laws of the United States. With some

limited exceptions to donations made to organizations recognized under the laws of Israel, Canada and Mexico, foreign organizations do not qualify. The details of donating directly to foreign organizations in those countries will not be explored in this article, and may be subject to further restrictions, so please consult a tax advisor if you wish to make such donations.

Donations that do not fit these requirements may be made - but they do not qualify for a tax deduction. In such cases, the donor may not deduct them on his federal tax return and the donee may not issue a receipt. Should the donor nonetheless request a receipt, any receipt provided should be clearly marked as "not tax deductible." If an organization decides to issue a tax-deductible receipt for a donation it knows not to be deductible (and makes no such notation), the organization exposes itself to serious civil and criminal sanctions.

What are some examples of deductible and non-deductible contributions?

Deductible donations in a *shul* setting include donations to cover the costs for general *shul* expenses (such as the sponsorship of *ner lama'or*, which covers electricity costs). As donors have the option to donate cash or property, a sponsorship of *shul* furniture can consist of writing a check to the *shul* and the *shul* making the purchase. Alternatively, the donor may purchase the furniture directly from the store. In such an instance, the donation would consist of property, i.e., the furniture, and as with any donation of property, the receipt issued to the donor should not assess a value, but rather merely acknowledge receipt of and describe the donated property. The donor would substantiate his deduction through a combination of the *shul* receipt, showing a description of the donated property, and his store receipt, showing the value of the donated property. (The requirements for donating property are complex and the reader is urged to see IRS Publication 526 for additional information.) The merits of donating certain types of property will be discussed below.

Some common examples of non-deductible payments include tuition payments (even for the portion allocated exclusively to religious studies), value of time or services, a "mandatory contribution," and a deposit, i.e., money that the donor expects to get back and/or actually gets back.

If an employer decides to pay the tuition for a child of its employee, absent payments made as part of a Qualified Tuition Reduction Plan (under Internal Revenue Code §117(d)), such payments would ordinarily be considered taxable compensation to the employee. The employer, thus, may not deduct such payments as a charitable contribution, since the employer thereby receives a benefit in exchange for its donation - i.e., the work of the employee (but a business expense deduction for such payments may be available).

Are there any benefits to donating property?

Certain types of property carry an add-

ed tax advantage when donating the property directly to the organization instead of selling it first and thereafter donating the proceeds. For example, let's say a person purchases publicly traded corporate stock for \$5,000 which grows in value to \$25,000. If the owner were to sell the stock and then turn around and contribute the proceeds, he would realize a taxable gain of \$20,000. By donating the stock as is, assuming he had owned the stock for more than a year, the donor may obtain a tax deduction for the full \$25,000 and need not pay tax on any of the gain in value. Note that contributions of this sort are limited to 30% of the taxpayer's adjusted gross income for the year, to be discussed in more detail in Part Two.

Is the value of volunteer work deductible?

The value of time or services is not deductible. Thus, the value of volunteer work is not deductible even when provided to help a qualified charitable organization. Some out-of-pocket expenses that the volunteer spends may be deductible - those that are: unreimbursed, directly connected with the services, expenses the donor accumulated only because of the services he provided, and expenses that are not personal living or family expenses. But the donor may not deduct the cost for child-care or any lost income due to volunteering. (The volunteer would be required to substantiate the unreimbursed expenses by obtaining a receipt from the organization acknowledging the volunteer service and whether any goods or services were provided to the volunteer in exchange.)

May payments made to a school ever be deductible?

While tuition payments are not deductible, payments made to a school separate from tuition, such as a building fund donation, may be deductible under certain circumstances. First, the donation must be made completely voluntarily. The IRS considers various factors to determine the voluntariness of a contribution, including whether the child would have been denied admission to the school had the contribution not been made, whether the enrollment materials imply the contribution to be required, whether the solicitation was made as part of the enrollment process, and whether the parents were under a contractual obligation to make the donation. Additionally, if the donor seeking the deduction is the parent of a student, for such a donation to be deductible it must be clear that the amount of tuition being charged by the school was adequate to support the costs of the child's education. (For donors who do not have children attending the school, the adequacy of tuition rates would not be relevant.) Clearly, calling tuition by another name will not transform non-deductible tuition payments into a deductible donation. Payments made to schools will be scrutinized to determine whether they were in fact non-deductible tuition payments in disguise.

To illustrate, let's assume a school claims not to charge tuition but instead requires a "voluntary" contribution from parents to cover the costs of the educa-

tion. Whether stated explicitly or implicitly, if the policy is such that those who fail to make the "voluntary" contribution are denied admission to the school, the contribution will be deemed not to be a contribution at all but rather non-deductible tuition. Alternatively, should a school require, for example, \$6,000 as tuition and request a \$1,500 voluntary building fund contribution - assuming the \$1,500 is indeed voluntary - such payment would likely be deductible. However, as the IRS considers contributions requested as part of the enrollment process a negative factor in determining voluntariness, the better practice is to conduct the building fund drive at a different time of the year and not as part of the enrollment process so not to give the impression that such funds were part of non-deductible tuition. For additional information on this issue, please refer to IRS Revenue Ruling 83-104 which provides many useful examples of both deductible and non-deductible contributions in the school context.

On the topic of tuition payments, the practice of two sets of parents agreeing that each will pay the other's child's tuition so that each may receive a tax deduction does not work. Such payments to the school are not being made with "detached and disinterested generosity," but are rather part of a scheme to disguise tuition payments as deductible donations. Additionally, as will be explored in Part Two, this scenario raises issues associated with designating a contribution for a specific purpose or individual.

What if a donor receives a benefit in exchange for his donation?

When a benefit is provided in exchange for a donation (known as a "quid pro quo" contribution), the fair market value of the benefit received may not be deducted. Take, for example, one who attends a *yeshiva* dinner. Assuming the dinner fee was \$180 and the fair market value of the dinner was estimated at \$50, the donor may deduct \$130. (Please note: the fair market value of the benefit is not deductible, no matter the cost of the benefit to the donee.) In such an instance (and in any instance where a donor contributes \$75 or more and a benefit of any kind is provided in exchange), the *yeshiva* is required to provide a receipt which assesses an estimated value for the dinner and a notice alerting the donor that the value of the dinner may not be deducted.

Whereas the general obligation to substantiate donations is on the taxpayer, in a scenario where a benefit is provided in exchange for a donation of \$75 or more, the donee organization has an affirmative obligation to issue a receipt in accordance with the above requirements. In our case, sample language can read, "The estimated value of the goods or services received is \$50. Only the amount of your contribution in excess of \$50 is tax deductible."

In the above example, should the donor respond that he will not be attending the dinner but nonetheless encloses a donation of \$180, the full \$180 may be deducted. If instead, the donor initially responded affirmatively to the dinner invitation and then decides not to attend (or if he attends and does not eat), the value of the dinner remains non-deductible. To be deductible in this case, the donor must take affirmative steps before the dinner to reject the benefit by indicating to the *yeshiva* his intention not to attend.

One additional point to mention about

dinners: Even if the entire dinner were to be sponsored by an individual, each attendee must nonetheless subtract the fair market value of the dinner portion received, since the issue is not the cost to the organization but the benefit to the donor. The sponsor of the dinner should obtain a tax deduction for his donation with the exception of his benefit (i.e., the fair market value of his dinner portion).

What is an incidental benefit?

The entire amount of the donation may be deducted when the only benefit provided in exchange is incidental. An incidental benefit is something of "token value," which is estimated currently to be valued at no more than \$9.60 (this number changes over time as it is adjusted for inflation) when the donor makes a minimum donation of \$48. This typically takes the form of a coffee mug or key chain with the charity's logo. Alternatively, if the benefit received is equal to or less than 2% of the donation, the entire donation may be deductible so long as the benefit does not exceed \$96 (adjusted yearly for inflation).

What is an intangible religious benefit?

An intangible religious benefit is defined as "any intangible religious benefit which is provided by an organization organized exclusively for religious purposes and which generally is not sold in a commercial transaction outside the donative context." Examples of such benefits include the cost for purchasing *shul* seats and dues, the purchase of an *aliyah* and the sponsorship of a *parsha* in a new *Sefer Torah*. More questionable cases include whether the money paid to use a *mikvah* may be deducted and whether the cost for purchasing a *lulav* and *esrog* directly from a *shul* may be deducted (on the one hand, the benefit received is religious, yet commercial vendors sell these items).

Examples where the amount paid will likely not be deductible include payments made to a *shul* to purchase wine and *matzoh* for *Pesach* (as these are ordinary consumer goods sold outside the donative context) and the rental cost for a *shul* hall (as the donor receives an ordinary benefit in exchange) unless the cost charged to rent the hall is exaggerated beyond market price. In such an instance, the amount paid beyond market price may be deductible if the donor made the payment with the intent of making a donation. (On that note, the organization should consult with a tax professional to determine if it is required to pay unrelated business income tax on the rental proceeds.)

At the present time, it is well settled that tuition payments made for religious education do not qualify for a charitable deduction, even though the benefit received in exchange can conceivably be seen as an intangible religious benefit.

What are the substantiation requirements?

In order to deduct any contribution, at the time of filing his tax return, the donor/taxpayer must be able to "substantiate" his contribution. The substantiation requirements differ based on the amount and the form of the donation. For cash contributions, a receipt is always needed regardless of the amounts. For a donation in the form of a check of under \$250, a canceled check or bank record showing the amount of the donation and the organization name would suffice. For amounts

of \$250 or more, a receipt is needed.

The receipt must be a written acknowledgment of the donation that includes the amount of cash or description of non-cash property donated, the date of the contribution, the name of the recipient organization and whether it has provided any goods or services to the donor. If goods or services have been provided, a description and good faith valuation of such goods or services must be included. If the donor received an intangible religious benefit, the receipt must include a statement that the only benefit received was an intangible religious benefit.

Part Two In Next Week's Paper

Part Two will address issues of designated/targeted donations, limits to deductible amounts, donor advised funds, rabbi's discretionary funds, the deductibility of raffles tickets and state registration requirements for charitable solicitation of funds.

Other Resources

Helpful resources published by the IRS regarding charitable contributions include: IRS Publications 526 (Charitable Contributions), 1771 (Substantiation and Disclosure), 561 (Determining the Value of Donated Property), 4302 (A Charity's Guide to Vehicle Donations), 4303 (A Donor's Guide to Vehicle Donations), and 597 (Information on the United States - Canada Income Tax Treaty).

Other helpful resources published by the IRS regarding tax-exempt issues include: IRS Publications 1828 (Tax Guide for Churches and Religious Organizations), 4221-PC (Compliance Guide for 501(c)(3) Public Charities), 4220 (Applying for 501(c)(3) Tax-Exempt Status), 557 (Tax-Exempt Status for Your Organi-

zation), and 598 (Tax on Unrelated Business Income of Tax Exempt Organizations).

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INTRODUCTION

This is a sequel to Part One, published last week, which outlined the basic elements of charitable contributions and substantiation requirements, and discussed some examples of deductible and non-deductible donations. Also addressed in Part One were the benefits of donating property, the deductibility of volunteer work and of payments made to schools, the effect of receiving benefits in exchange for donations, and when the benefits received are incidental or intangible and religious in nature. Part Two, below, continues this theme with specific application to various common scenarios. As this article is the second of a two-part series, the reader is strongly urged to first read Part One before proceeding further.

May a donor designate a contribution for a certain purpose or individual?

The ability to designate a donation is likely the least understood and most legally challenging area within the laws of charitable giving. The U.S. Supreme Court has stated, "Charity begins where the certainty in beneficiaries ends, for it is the uncertainty of the objects and not the mode of relieving them which forms the essential element of charity." As the illustrations below will make clear, the key to ensuring the deductibility of a donation is to make certain that the organization maintains control and discretion over the means in which the funds are used (so that the organization can ensure such funds are used in furtherance of its exempt purposes) and the donor intends to benefit the organization, not an individual.

A donor may indicate to the recipient organization a broad goal or purpose for the use of the funds, so long as the goal is consistent with the organization's exempt purposes and the organization maintains discretion over the actual way in which the funds are used. Thus, suppose a donor expressed his desire that his cash donation be used to build a new *aron kodesh*, to purchase new *seforim*, or even to support needy people (without indicating a specific needy person), the donation should be deductible.

(The organization should be sure, however, that its organizational documents authorize it to engage in these activities.)

A more difficult scenario is where the donor requests that his donated funds be

used to benefit a specific individual. To be sure, if the donor would thereby receive a benefit, the donation would not be deductible. Thus, let's say a grandfather donates money to a school with the stipulation that the donation be credited toward his grandchild's tuition. The donation should not be deductible, since the grandfather is assumed to benefit from the education that is provided to his relative which he is helping to fund. The same rule would apply to a donor who makes a donation to an organization and stipulates that his donation be provided to support his son who at the time is studying in a *kollel*. Once again, the support provided to the son is deemed to benefit the donor, which makes it non-deductible.

What, though, if the donor receives no benefit in return, yet designates a specific individual as the recipient?

Say the donor requests from his *shul* that his donation be provided as charity to his needy neighbor. In considering this issue, recall the requirement that donations be made to organizations, not individuals. The rule is that funneling money through an organization to be provided to an individual cannot transform funds that otherwise would not be deductible into deductible contributions. The funds must be given to the organization with the intent to benefit the organization (and purposes in which the organization supports) and the organization must possess control and discretion over how the funds are to be used. The organization may very well decide to benefit the individual with charitable funds, but that decision must belong to the organization and may not be imposed on it by a donor.

To sum it up, in application, a targeted donation to an organization specifying an individual beneficiary when the donor is not benefiting may be deductible so long as certain requirements are met: First, the donor's input must be limited to a mere "recommendation" and nothing more. Second, the organization must maintain full control over the donated funds and discretion as to their use. This discretion must be real and substantial and not simply a rubberstamp of the recommendation given by the donor. Third, the donor must understand that the recommendation is advisory and that the organization retains full control, including the authority to accept or reject the donor's recommendation. Fourth, the donor must intend to benefit the organization, not an individual.

The organization should have a policy informing potential donors of the limits to which donor recommendation will be followed. A benevolence fund should consider adopting language of the following policy:

"[Organization], in the exercise of its religious and charitable purposes, has established a benevolence fund to assist persons in financial need. [Organization] welcomes contributions to the fund. Donors are free to suggest beneficiaries of the fund or of their contributions to the fund. However, such suggestions shall be deemed advisory rather than mandatory in nature. The administration of the fund, including all disbursements, is subject to the exclusive control and

discretion of the [organization] board. The [organization] board may consider suggested donations, but in no event is it bound in any way to honor them, since they are accepted only on the condition that they are merely nonbinding suggestions or recommendations. As a result, donors will not be entitled to a return of their designated contributions on the ground that the [organization] failed to honor their designations.

"Donors wishing to make contributions to the benevolence fund subject to these conditions may be able to deduct their contributions if they itemize their deductions on their federal tax return. The [organization] cannot guarantee this result and recommends that donors who want assurance that their contributions are deductible seek the advice of a tax attorney or CPA. Checks should be made payable to the [organization], with a notation that the funds are to be placed in the [organization] benevolence fund."

After all is said and done, however, even when clear notices are provided and the donee maintains the proper understanding, if an organization regularly honors its donors' recommendations, the IRS may find that the organization lacked the requisite control over the funds and disallow the deductions. Thus, there are ways to increase the likelihood of deductibility for certain designated contributions. However, any designation will be suspect and the outcome less than certain.

Oftentimes, organizations advertise seeking to raise funds to benefit a specific family or individual. If the organization decided to initiate the fundraising drive, targeted donations would be permitted. This is so because an organization may, on its own initiative, decide to collect funds to benefit a specific individual. Donations provided to such a fund would be deductible, as the organization is exercising its control and discretion in choosing the recipients. Said another way, a donor may not instruct an organization how to use donated funds or what causes such funds should support. Conversely, an organization may exercise its discretion and decide which causes, including individuals in need, to support.

It should be noted that an organization must be established with the authority to benefit a class of people and may not pre-select specific individuals to benefit. Once established, the organization may exercise its discretion to use donated funds in furtherance of its exempt purposes, including choosing to benefit specific individual beneficiaries who are part of the class.

As provided, there are times when organizations may desire to issue grants of charitable funds to individuals. If an organization desires to distribute such grants, it should be sure that it is in compliance with the following requirements: First, the organization must be authorized in its organizational documents to make grants to individuals. This usually means that authorization should be stated as one of its exempt purposes in the organization's certificate of incorporation (some professionals believe that including "charitable" as an exempt purpose in the certificate of incorporation would

suffice). Second, if the organization files a year-end form 990, the recipients of such aid would need to be disclosed as required on Schedule I of that form. Third, as required by IRS Revenue Ruling 56-304, the organization must maintain adequate records and case histories to show: the name and address of each recipient of aid, the amount distributed to each, the purpose for which the aid was given, the manner in which the recipient was selected, and the relationship, if any, between the recipient and (a) members, officers, or trustees of the organization, or (b) a grantor or substantial contributor to the organization or a member of the family of either.

Are there any limits to the amount that may be deducted?

Charitable contributions may be deducted only during the calendar year that the donations were made. The tax code imposes limitations on the amount that may be deductible in a given year, generally based on the income of the taxpayer. Ordinarily, a person may deduct up to 50% of his Adjusted Gross Income (AGI) for the year. However, there are many exceptions when the limit will be tighter, including contributions of capital gain property which will be limited to 30% of AGI. (The rules regarding these limitations are complex and the reader is advised to seek professional guidance.)

Additional amounts may be carried over for up to five years, but the following year's limitation will also be based on the taxpayer's AGI for that year. Thus, let's assume A has an AGI of \$120,000 for 2010. A may deduct up to \$60,000 for donations contributed during 2010. If A contributes \$75,000 during 2010, the additional \$15,000 may not be deducted during 2010, but may be carried over to be deducted in 2011 (or any year up to and including 2015). However, the deductible amount permitted in 2011 will be limited to 50% of A's 2011 AGI.

When should a "donor advised fund" be used?

Given the yearly limitation on charitable contribution deductions, let's assume B earns a larger than ordinary gain in 2010 and thus has a larger AGI that year. His yearly limit for 2010 will be much greater than usual and carry with it the ability to deduct a greater amount of contributions. B may wish to have more time to choose the recipients of the charitable funds, while still claim a deduction of those funds during 2010. In such an instance, B should consider giving the funds to a donor advised fund (DAF). A DAF (not to be confused with "The Daf") is a special financial vehicle that allows a full deduction during one year, yet provides the donor the opportunity to make recommendations of recipients in future years (while the DAF has exclusive legal control over such assets and ultimate control). One important caveat is that DAFs may only make distributions to other qualified charitable organizations, not to individuals.

Various financial institutions, including Fidelity and Vanguard, offer their customers the opportunity to set up a DAF. (Agudath Israel of America also

offers this opportunity, called the "Special Tzedakah Fund"). Due to recent legislation affecting DAFs, it is imperative that one seeking to use a DAF consult a qualified tax advisor.

Are there any restrictions on a "rabbi's discretionary fund"?

Many congregations have a dedicated fund, sometimes referred to as a "rabbi's discretionary fund," to which contributions are made and the rabbi maintains discretion to choose the recipients of the donated funds. Contributions made to this type of fund should be tax-deductible so long as the following conditions are met. At the outset, the three requirements to deduct any charitable contribution must be present: (1) the fund is a recognized charitable organization or being run under a recognized charitable organization (this can be a *shul* bank account that gives the rabbi signing authority), (2) the contribution is made with donative intent, and (3) no benefit is given in return to the donor.

Additionally, to ensure that the organization maintains proper discretion over the funds as required, the *shul* board must maintain administrative control over the use of the funds by reviewing distributions. The *shul* board should also only permit the rabbi to distribute in furtherance of certain approved purposes, e.g., needy people, based on the exempt purposes of the organization. Significantly, the rabbi may not possess authority to use the funds for himself or his immediate family. The mere availability of the funds for the rabbi's own personal use, even without actually using them, would require him to pay taxes on such funds due to the "constructive receipt" rule. A sample resolution to enact this restriction might look like this:

"The rabbi acts as agent of the synagogue in disbursing funds from their discretionary funds. These funds remain the property of the synagogue. The rabbi of the synagogue is authorized to use the monies contributed to the discretionary funds for needs and projects consistent with the religious, educational and charitable purposes of the synagogue. No monies from these discretionary funds shall be used or distributed for personal purposes of the rabbi or his family. The purposes for which discretionary funds have been used shall be reviewed annually by the then-president and or any delegates appointed by the then-president, including, should the president so choose, outside auditors."

Furthermore, if the rabbi intends on making grants to individuals (instead of only to other organizations), the procedures and record-keeping required to make grants to individuals must be maintained.

Are raffle tickets (and Chinese auctions) ever deductible?

The IRS has stated that raffle tickets are not deductible, as the donor is considered to be purchasing a chance to win, which is deemed to be a benefit equal in value to the amount paid for the ticket. If the raffle maintains a policy that tickets are "no purchase necessary," some experts believe that payments made to the organization conducting the raffle to purchase tickets would be deductible up to the number of tickets that would be given for free if requested. (This assumes that the purchaser of the raffle tickets has in mind the requisite donative intent and that the organization conducting the raffle is a qualified charitable organization.)

One court that dealt with this issue hinted that there are times that raffle tickets may be deductible. The court in *Goldman v. Commissioner*, 46 T.C. 136 (1966) *aff'd* 388 F.2d 476 (6th Cir. 1967) stated, "it is possible to hypothesize a raffle ticket situation where the charitable nature of the gift would scarcely be debated, as where the purchase for \$10 is one of one thousand chances and the prize a nosegay of violets." The court in that case ultimately concluded that the purchase of the raffle tickets could not be deducted, since the prizes offered by the charity were of substantial value and the taxpayer failed to establish that his chances of winning were sufficiently low to entitle him to a charitable deduction. However, this case indicates that raffle tickets might be deductible when either the value of the prizes are insubstantial or the chances of winning are very remote because of the number of tickets sold. Since there is no clear precedent when a deduction as such was allowed, an organization and taxpayer alike should seek the advice of a qualified tax advisor before adopting this position.

On the topic of raffles, under certain circumstances raffle prizes require reporting and withholding. Organizations must issue a Form W-2G if the value of the prize is \$600 or greater and is at least 300 times the amount paid for the ticket. Additionally, organizations must withhold taxes on winnings in excess of \$5,000. Such withholding should be funded by the prize winner (which may prove difficult to do when the prize is personal property and not cash). If an organization decides to pay the taxes due on the prize on behalf of the winner, since such payments would be considered additional taxable income to the winner, the organization will have to gross up, i.e., pay tax on the tax. (This process repeats itself down to a dollar and requires the organization to pay a substantially greater sum in taxes than had the taxpayer paid it himself.)

Some states require licensing

and impose other state restrictions to conduct raffles or any kind of charitable gaming. For example, in New York, under many circumstances, an organization must obtain a license to conduct a raffle and the raffle would be subject to many state gambling laws. Details can be found at <http://www.racing.state.ny.us/charitable/char.home3.htm>. Organizations should consult the gambling laws in their states to ensure compliance with such requirements. Additionally, IRS Publication 3079 is a useful resource for more information about charitable games conducted by tax-exempt organizations.

Need one register to be able to solicit funds?

Most states impose a registration requirement in order to conduct charitable activities, such as soliciting contributions or holding charitable assets. Each state has different rules and registration requirements. For example, most organizations that engage in charitable activities in New York State (NYS) and/or solicit charitable contributions (including grants from foundations and government grants) in NYS are required to register with the NYS Attorney

General's Charities Bureau. The organization must complete form CHAR410, submit various organizational documents and pay a fee. Details can be found at http://www.charitiesnys.com/faqs_reg_new.html.

In NYS, some organizations, including many religious organizations, are exempt from registration. Organizations that are exempt from registration must file a request for exemption, Schedule E to form CHAR410. NYS also requires registered charities to file an annual form CHAR500 and other states may impose similar annual filing requirements.

CONCLUSION

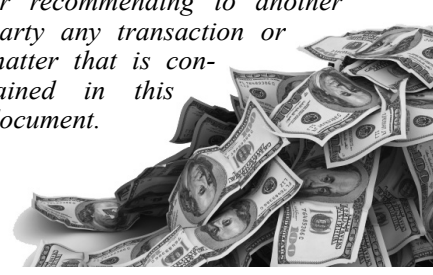
The charitable contribution deduction from federal income tax provides an important incentive to support worthy charitable causes. It is imperative, however, that the deduction be applied correctly and taxpayers and organizations alike obtain proper tax advice from a qualified tax advisor in both the planning stages as well as when questions arise.

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any statement or information it contains is intended to or shall be construed as establishing an attorney-client relationship or to constitute legal advice. Readers are also cautioned that the information in this article may not apply to all situations. Consequently, readers must not rely upon this article or information it contains as a substitute for competent individualized legal advice about the specific circumstances of the readers. Attorney advertising and prior results do not guarantee a similar outcome.

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כינוס תשובה

לקראת ימי הרחמים והרצון הממששים ובאים על"ט
נתאסף יחד לעצרת חיזוק והתעוררות לתשובה ותפלה
שתתקיים בע"ה בבית מדרשינו

ביום שני פרשת האזינו כ"ז אלול תש"ע
בשעה 8:00 בערב
Monday September 6, 8:00 P.M.

ישאו דברים

<p>הגאון רבי שלמה שרגא פייוועל שוסטאל שליט"א ר"י תורה תמימה</p>	<p>הגאון רבי אלי דוב וואכטפויגל שליט"א ר"י זכרון משה סאוט פאלסבורג</p>	<p>הגאון רבי ירוחם אלשין שליט"א ר"י בית מדרש גבוה לייקוואד</p>
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דברי פתיחה: הרב הגאון רבי אביעזר כהן שליט"א, מרא דאתרא

בברכת כתיבה וחתימה טובה