THE
CATHOLIC
FOUNDATION

Year-End Countdown: Checklists to Launch Successful Gifts

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Year-End Countdown: Checklists to Launch Successful Gifts

He wasn't a singer, actor or news anchor, but you may have heard his voice. John William "Jack" King was chief of public information at NASA. Much of the world listened to his calm voice count down the historic checklist for Apollo 11—a launch that sent three astronauts to the moon.[1]

Twelve, eleven, ten, nine. Ignition sequence start.

Six, five, four, three, two, one, zero. All engines running.

Liftoff! We have a liftoff. Thirty-two minutes past the hour. Liftoff on Apollo 11.[2]

One of Jack King's true gifts was describing complex technical matters in plain English.[3] As we near the end of the year, many prospects and clients considering charitable gifts could use a "chief of information" who could provide a countdown using clear, simple directions. Just as King's pre-launch commentary highlighted the tasks being completed, advisors can offer guidance, assistance and reinforcement that gifts are still a "GO" at year end.

T minus ten weeks until year end…

Charitable contribution over $5,000, go or no go?

Qualified appraisal, go or no go?

Completion of transfer of charitable gifts, go or no go?

Of course, checklists are imperative for a rocket launch, but they are equally important for making sure that charitable gifts meet all legal and tax requirements. Following all the necessary steps ensures that clients and prospects complete successful year-end gifts.

Don't Forget Your Gift Preserver: Appraisals for High-Value Gifts

Whether you're in a canoe, a ski-boat or a yacht, boating can be an exceptional hobby. However, it can also present unique dangers. To fully enjoy boating, you must be prepared and careful. The U.S. Coast Guard helps boaters get ready by offering educational and safety programs and by providing pre-departure checklists covering items from state registration and documentation to spare parts, operational items, weather information, a float plan and life preservers.[4] These checklists provide useful guidance for experienced as well as novice boaters.

Making a charitable contribution—an enjoyable and fulfilling experience—is also accompanied by "hazards" that affect contributions and deductions when the gift does not follow the requirements set out in the Internal Revenue Code (IRC) and related regulations. One hazard that can trip up donors is the IRC appraisal requirement for high-value gifts.

Most donors understand that when they make a charitable contribution, they may take a charitable deduction if they itemize on their income tax returns. Donors also likely know that to take the deduction, they need a record of the gift. However, more substantial gifts require an even greater understanding of the tax requirements.

Gift of Cash—A taxpayer must maintain a record of the contribution, such as a cancelled check, a receipt or written letter from the charitable organization showing the donor's name, the date, and the amount of the contribution, or some other reliable written record documenting the same information.[5]

Gift of Property Over $500—The taxpayer must include a description of the donated property with the tax return.[6]

Gift of Property Worth $5,000 or More—The taxpayer must obtain a "qualified appraisal" and include an appraisal summary with the tax return. (See the Appraisal Summary Checklist for more detail.)

If the donation is non-publicly traded stock, certain publicly traded securities, or a contribution by a C corporation, additional records must be maintained.[7] The taxpayer must also maintain the general substantiation records required by Treas. Reg. §1.170A-13(b)(2)(ii). (See the Substantiation Checklist below for more detail.)

Gift of Property Worth $500,000 or More—The taxpayer must obtain a qualified appraisal and attach a copy of the appraisal (not just an appraisal summary) to the income tax return for that year.[8]

Substantiation Checklist

A taxpayer must generally keep gift records showing the following:[9]

- The name and address of the donee organization
- The date and location of the contribution
- A description of the property in reasonable detail under the circumstances, and if the gift is a security, the name of the issuer (for stock), the type of security, and whether the stock is publicly traded and where it is traded
- The fair market value (FMV) of the property at the time of the contribution and how this FMV was determined
- If the contribution involved certain ordinary income and capital gain property, the basis of the property (See IRC 170(e))

A Qualified Appraiser

IRC §170(f)(11)(E)(ii) defines a qualified appraiser as someone who:

1. Has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary
2. Regularly performs appraisals for which the individual receives compensation
3. Meets such other requirements as may be prescribed by the Secretary in regulations or other guidance[10]

The Code further requires that a qualified appraiser "demonstrates verifiable education and experience in valuing the type of property subject to the appraisal." Also, the individual "has not been prohibited from practicing before the Internal Revenue Service by the Secretary at any time during the three-year period ending on the date of the appraisal."

A Qualified Appraisal

According to Treasury Regulations, a qualified appraisal is an appraisal document that is not less than sixty (60) days old, done by a qualified appraiser, includes the required appraisal information, and does not involve a prohibited appraisal fee.[11] The qualified appraisal must be conducted in accordance with generally accepted appraisal standards and should assess value as of the proposed date of the gift.[12] The required appraisal information includes:[13]

1. A sufficiently detailed description of the property
2. The physical condition of any tangible property
3. The contribution date (or expected date)
4. The terms of any agreement or understanding that restricts or reserves rights to or use of the property
5. The name, address, and other identifying information and/or the identifying number of the qualified appraiser
6. The qualifications of the qualified appraiser who signs the appraisal, including the appraiser's background, experience, education, and membership (if any) in professional appraisal associations

7. A statement that the appraisal was prepared for income tax purposes
8. The date (or dates) on which the property was appraised
9. The appraised fair market value (see Treas. Reg. § 1.170A-1 (c)(2)) of the property on the date (or expected date) of contribution
10. The method of valuation used to determine the fair market value
11. The specific basis for the valuation

The IRS provided additional information on qualified appraisers and qualified appraisals in Notice 2006-96, including comment on substantial and gross valuation misstatements attributable to incorrect appraisals.[14]

Gifts That Do Not Require an Appraisal

According to the IRC, gifts of cash, publicly traded securities, inventory, and certain qualified vehicles do not require an appraisal because they are considered "readily valued property."[15]

Failure to Comply

A failure to provide the required documentation may result in the IRS disallowing the charitable deduction. In the case of *Van der Lee vs. Commissioner of Internal Revenue*, the Tax Court limited the couple's deductions because they failed to provide timely appraisals and other required documentation.[16] The Second Circuit Court of Appeals affirmed this ruling, stating:

Here, the tax court did not err in concluding that certain of the Van der Lees' claimed charitable contributions did not meet the above-described substantiation requirements. First, Mrs. Van der Lee's submission of credit card statements (with allegedly qualifying expenses circled) does not meet the I.R.C. §170(f)(8) requirement... Second, Mrs. Van der Lee's $6,000 claimed deduction for the use of a home office for her volunteer work was not allowable because it was not substantiated by any "credible documentary evidence"... Third, the Van der Lees' donation of kitchen and bathroom items to the Hudson Valley Materials Exchange, for which they claimed a $33,009 charitable deduction, was not adequately substantiated under the Code's standards for donation of property valued at more than $5,000.[17]

The court found the Van der Lees negligent in taking the charitable deduction by failing to document the circumstances and the court affirmed the 20% negligence penalty assessed by the IRS.[18] The court stated:

…the Van der Lees negligently "failed to provide [their accountant] with all relevant information" necessary to accurately report their charitable deductions… In particular, the Van der Lees "gave [their accountant] only the total [amount] of the charitable contributions" that they claimed were deductible for the 2002 tax year, rather than an itemized list; "did not tell him that a large portion of the contributions was not gifts by cash or check"; and did not provide him with any of the written documentation necessary to substantiate the disallowed contributions.[19]

The Need for a Checklist

Just as a boater needs to meticulously follow buoys and other navigational aids to avoid running up on a shoal, a donor making a charitable donation—particularly one of high value—needs to carefully follow the applicable law. There are no "search and rescue" crews to locate a missing qualified appraisal. Instead, the donor should follow the advice of a professional to make certain the donation meets all the necessary appraisal requirements.

Appraisal Summary Checklist

An appraisal summary is a form prescribed by the IRS that is signed and dated by both the donee and the appraiser and includes the following information as specified by the Treasury regulations:

- The donor's name and taxpayer identification number (individuals use a social security number while partnerships or corporations use an employer identification number)
- The donee's name, address, and taxpayer identification number
- The date the donee received the property
- A description of the property (detail must be such that a person who is not generally familiar with the type of property can ascertain that the appraised property is the contributed property)
- A brief summary of the overall physical condition of the tangible property at the time of the contribution
- The manner of acquisition (e.g., purchase, exchange, gift or bequest)
- The date the donor acquired the property (or the date the property was created, produced or manufactured by or for the donor)
- The cost or other basis of the property, adjusted as provided by Section 1016
- A statement explaining whether or not the charitable contribution was made by means of a bargain sale and the amount of any consideration received from the donee for the contribution
- The name, address and identifying number (if a taxpayer identification number is otherwise required by section 6109 and the regulations thereunder) of the qualified appraiser who signs the appraisal summary and of other persons as required
- The appraised fair market value of the property on the date of contribution
- The appraiser's declaration that he or she is a qualified appraiser as described in 26 CFR 1.170A-13(c)(5)(i)
- The appraiser's declaration that the fee charged for the appraisal is not of a prohibited type and that appraisals prepared by the appraiser are not being disregarded pursuant to 31 U.S.C. 330(c) on the date the appraisal summary is signed by the appraiser
- Any other information required on the appraisal summary form

Back to School: Don't Let the Dog Eat Your Receipts

The start of a new school year is exciting and often chaotic. To ease the transition from summer freedom to academic structure, retailers and schools provide back-to-school checklists for supplies that will be needed in the fall. Students may have their own mental checklists to prepare for the first day of school—pack a lunch, grab a jacket, label notebooks for each subject, sharpen pencils and make sure summer homework is completed.

While failing to complete homework is a problem for students, failing to substantiate a gift can cause significant issues for donors and their advisors. Although keeping records seems easy in theory, far too many taxpayers run afoul of this requirement. A simple checklist can help.

Gift Acknowledgement Checklist

Gifts over $250 require the charity to provide a contemporaneous written acknowledgement in order for the donor to claim a charitable deduction. This acknowledgement must include the following:[20]

- The amount of a cash donation or a description of any non-cash property donated
- A statement of any goods or services the charity provides in consideration, in whole or in part, for any cash or other property donated, including a description and good faith estimate of the value of such goods or services
- A statement, if applicable, of whether the charity provides any intangible religious benefits.

Although taxpayers frequently challenge the application of these rules, the IRS and the courts are consistent in handling cases involving substantiation. Let's take a closer look at two of those cases.

Knowles v. Commissioner

In *Margaret Knowles v. Commissioner*, an August 2017 U.S. Tax Court case, one of the petitioner's issues involved a claim for an itemized deduction for charitable contributions.[21] Knowles was a psychiatrist who held medical licenses in Illinois and Wisconsin and worked for a medical and health care group at a salary of $200,000 per year. Knowles also operated a horse farm and a grill cleaning business. As a result of an IRS audit, the IRS brought a notice of deficiency with a number of claims, including a disallowance of Knowles' deduction for charitable contributions in 2011 and 2012.

Knowles claimed a charitable contribution of $5,000 for a donation of designer clothing to a religious charity called the "Log Church." Then, in 2012, Knowles made a claim for a deduction of $12,589 to unidentified individuals. The Tax Court denied the deduction in both years, noting the requirements that "a taxpayer must maintain for each contribution a receipt from the donee showing the name of the donee, the date and location of the contribution, and a description of the donated property in detail reasonably sufficient under the circumstances."[22] The Court also noted the additional requirements under the Treasury Regulations that "for donations of property other than money in excess of $500 but less than $5,001, a taxpayer must substantiate the following: the manner of acquisition, the proper date of acquisition, and the cost or the basis of the donated property."

Since Knowles did not substantiate her charitable contributions for tax years 2011 and 2012, the Tax Court upheld the IRS' disallowance of these deductions for both years.

Garcia v. Commissioner

Juan Garcia (a truck driver) and his wife Caridad Leon-Garcia (a school teacher) live in New Jersey. The IRS audited their 2010 tax return with a focus on itemized deductions, including a claim for charitable deductions, and assessed a deficiency. The Garcias appealed the matter to the Tax Court.[23]

In 2010, the Garcias donated cash, property and time to various charities, including:

- **The local Knights of Columbus (KOC)—**cash gifts, donations of food, and financial assistance to the family of a KOC member who lost his job.
- **The Catholic Diocese of Trenton—**gifts and travel expenses related to performing services for the Diocese.
- **American Veterans (AMVETS) unattended donation bins—**over $3,500 worth of clothing (for which the Garcias had created a log with values during the IRS audit).

The Diocese provided a letter substantiating a portion of the Diocese gift and this amount was allowed. The IRS disallowed the deduction for the Diocese travel expenses and the AMVETS donations.

The Tax Court first addressed the claim for travel expenses, which may be reimbursable if "incident to the rendition of services."[24] In the Garcias' case, the Tax Court disallowed the travel expenses because not only did the Garcias not have a contemporaneous record of the expenses, they did not have evidence that they performed any distinct services at all.[25]

As substantiation for the various clothing donations, the Garcias produced a 2014 letter from AMVETS, which the Tax Court did not find to be persuasive. The 2014 letter was clearly not contemporaneous with the 2010 donations, so the Tax Court affirmed the IRS' disallowance of the deduction for the clothing donations.

Whether a gift is large or small, cash or non-cash, the courts consistently require donors to follow the law and substantiate charitable gifts. Taxpayers can rest assured that a claim of "The dog ate my paper!" will not get them off the hook.

Household Items Checklist

According to reports from the Joint Committee on Taxation, donations of clothing and household items result in billions of dollars in charitable deductions each year. These deductions are only allowed for items in good used condition or better, and the IRS may deny any deduction for an item of minimal monetary value. However, IRC §170(f)(16)(D)(ii) specifies certain exclusions from the "household items" category, including items that might be of higher value.

Included	**Excluded**
✔ Furniture	✔ Food
✔ Furnishings	✔ Paintings/Artworks
✔ Electronics	✔ Antiques
✔ Appliances	✔ Gems
✔ Linens	✔ Jewelry

No Fishy Tales About Gift Timing

There is a good-natured stereotype of the fisherman who returns empty-handed but tells tall tales about "the one that got away." Most listeners will smile and nod, thinking about the typical fishing checklist:

- ✔ Rod
- ✔ Reel
- ✔ Beer
- ✔ Fish story
- Fish (optional)

While a "fish story" may be acceptable or even expected from a fisherman, donors who wish to claim a charitable deduction cannot rely on similar forms of exaggeration related to any aspect of their gift.

The law sets out a clear framework for obtaining a charitable deduction. The IRC provides that the taxpayer "shall be allowed as a deduction any charitable contribution (as defined in subsection (c)) payment of which is made within the taxable year."[26] In other words, the individual making the contribution must:

- Be a taxpayer
- Make a contribution to a charity
- Deduct the payment in the year in which the payment is made

This seems straightforward, but what about a taxpayer who wanted to make a charitable contribution at the end of 2016 and made a bookkeeping entry to record the gift, but the actual payment did not occur until the beginning of the 2017? Would that qualify as a charitable deduction for 2016 (as was the intent, and as the records show) or for 2017 (when the physical transfer of the gift occurred)?

U.S. courts addressed this situation a number of times, including in the Seventh Circuit Court of Appeals case of *Nehring v. Commissioner*. The Nehrings owned a family corporation. They had a corporate bank account, and each family member had an individual account within this main account.[27] Their salaries and dividends were credited to these individual accounts and their expenses were paid by corporate check and charged against each individual's account.[28] The Nehring family was associated with St. John's Lutheran Church, to which they made individual contributions. Due to the close Nehring connection and support, St. John's chose Paul Nehring, the patriarch and president of the family corporation, to be treasurer of their building fund. As he had done for the family members, Nehring created an account for the church within the corporate account.[29]

Nehring directed the corporate bookkeeper to charge his individual account for a number of donations to the church.[30] The bookkeeper entered the transactions to reflect the credit to the church and charged these amounts against Paul Nehring's account.[31] Nehring claimed a deduction for the charitable gifts during the tax year in which the bookkeeper made the adjustments, but the IRS refused to allow the deduction. Why? According to the IRS, the transactions did not become final until the following year.

While this case presents a number of issues, one of the key problems for the Nehrings was meeting the legal requirement to clearly identify the date that a charitable transfer is complete. The IRS did not consider the transfer complete on the date the bookkeeper recorded it because all of the church funds were still within the corporate account and under the control of a corporate employee. The bookkeeper's adjustments were not enough to show that the transfer between these accounts was actually a completed charitable gift or that the transferred amount was exclusively available to the church. In fact, there was no legal reason that the bookkeeper could not have transferred the donated money into another account within the overall corporate account. As a result, the only clear indication that the money was for the church was when an actual payment was made on behalf of the church, which happened in the year following the transfer (and the year following Nehring's charitable deduction).

The IRS disallowed Nehring's deduction and the case went to litigation. In reviewing the matter, the Seventh Circuit Court of Appeals sided with the IRS, stating that they were "unable to perceive how the acts either of the corporation or of the individuals in transferring a credit from the corporate account or the individual accounts to the church account upon the books of the corporation could constitute an assignment to the church."[32] The court also noted that the money identified for the church was an "earmark" and the individuals retained the power to revoke the "so-called assignment of credit."[33]

The holding in Nehring and other similar cases reinforces the necessity to make sure that the contribution is properly transferred to the charity in the year for which the taxpayer wants to take the deduction. Even the best of intentions can be undone by a failure to follow the formalities required by federal tax law.

Launching a Legacy: Checklists Are Necessary

Launching a spaceship from Earth is a complex undertaking. While public information professionals like Jack King make launches sound accessible and relatable, the behind-the-scenes work that is necessary to make the event successful involves a multitude of steps, each performed meticulously and on time. According to Mike Leinbach, a NASA shuttle launch director, the gigantic checklist for a shuttle launch includes status checks of every main system, a launch readiness check with the contractors who built the shuttle, a senior staff check, a payload check, a safety check, a weather check, and a "confirm" check that checks all the prior checks.[34]

Ten. Nine. Eight. As we enter the countdown to year end, a checklist can also help clients who are planning charitable gifts. While the tax rules are not as complex as rocket science, the intricacies of the Internal Revenue Code present unique challenges for donors. As an attorney, advisor or other financial professional, you can fulfill the role of "information officer" by using year-end giving checklists to ensure a successful "launch" of each client's charitable legacy.

Endnotes

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2 Jack King, as reported in AP obituary, "Launch Commentator for Apollo 11 Moon Shot, Jack King, Dies," June 12, 2015. http://www.msn.com/en-us/news/technology/launch-commentator-for-apollo-11-moon-shot-jack-king-dies/ar-BBkZ0z7

3 Nigel Fountain, "Jack King Obituary: NASA PR Chief Recognizable to Millions as the Voice of America's Space Program," *The Guardian*, June 17, 2015. https://www.theguardian.com/science/2015/jun/17/jack-king

4 "A Boater's Guide to the Federal Requirements for Recreational Boats," United States Coast Guard. uscgboating.org/images/420

5 Treas. Reg. §1.170A-13(a)(1).

6 IRC §170(f)(11)(B).

7 Treas. Reg. §1.170A-13(c)(2)(ii).

8 IRC §170(f)(11)(D).

9 Treas. Reg. §1.170A-13(b)(2)(ii).

10 IRC §170(f)(11)(E)(ii).

11 Treas. Reg. §1.170A-13(c)(3).

12 IRC §170(f)(11)(E) and Treas. Reg. §25.2512-3.

13 Treas. Reg. §1.170A-13(c)(3)(ii).

14 Notice 2006-96, I.R.B. 2006-46, October 19, 2006.

15 IRC §170(f)(11)(A)(ii)(I).

16 *Van der Lee vs. Commissioner of Internal Revenue*, No. 12-226-ag, CA-2, 2012-2 ustc. Aff'g 102 TCM 329, Dec. 58,772(M), TC Memo. 2011-234.

17 Id.

18 Id.

19 Id.

20 IRC §170(f)(8)(A).

21 *Margaret Knowles v. Commissioner*, U.S. Tax Court, CCH Dec. 60,983(M), T.C. Memo. 2017-152, (Aug. 7, 2017).

22 Id.

23 *Juan Carlos Garcia and Caridad Leon-Garcia v. Commissioner,* U.S. Tax Court, CCH Dec. 60,525(M), T.C. Memo. 2016-21, 111 T.C.M. 1087, (Feb. 16, 2016).

24 Treas. Reg. §1.170-2(a)(2). See also: Travis Smith and Esther J. Smith v. Commissioner, U.S. Tax Court, CCH Dec. 32,154, 60 T.C. No. 988, 60 T.C. No. 106, (Sept. 26, 1973).

25 *Garcia v. Commissioner.*

26 IRC §170(a)(1).

27 *Nehring v. Commissioner of Internal Revenue*, 131 F.2d 790 (1942), 792.

28 Id. at 791.

29 Id. at 793.

30 Id.

31 The other members of the Nehring family made similar requests to donate to St. John's.

32 Id. at 794.

33 Id.

34 Steven Leckart, "Launching a Shuttle: NASA Countdown to Blastoff," Wired Magazine, May 24, 2010. https://www.wired.com/2010/05/process_shuttle/

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