

United Way of America Guidance on IRS Notice 2008-16
Recordkeeping Requirements for Lump Sum Charitable Contributions
(e.g. made by a method other than Payroll Deduction)
(Issued 2/6/08)

Background

On August 16, 2006 the Pension Protection Act was passed into law and it included a number of provisions that were specifically targeted at the not-for-profit sector. Many of those provisions are discussed in previously issued guidance from United Way of America which can be found on UW Online. One issue that attracted much attention was a provision to require donors to have a tax receipt to substantiate all contributions (as opposed to only those that exceeded the \$250 threshold that had been in force up to this point). We issued guidance on the impact of that change relative to Payroll Deduction contributions in December of 2006.

On January 8, 2008 the IRS issued Notice 2008-16 which now establishes the requirements for what are referred to as Lump Sum contributions (defined by the IRS as all “cash contributions” other than those made through a payroll deduction program). Having seen the amount of energy and cost incurred by our members in planning for the inevitable increase in requested tax documentation from donors as a result of Notice 2006-110, UWA was particularly concerned about the fact that the new notice (2008-16), would require our members to immediately begin to include information on who the contribution was designated to. We understand that most United Ways do not currently have systems that can automatically include designation information on their year end acknowledgement letters and were concerned about the tremendous additional administrative cost that would be involved in manually gathering and including this information.

Of additional concern is that the IRS indicated in the notice that they are considering adding a requirement in the future to include information on when the designated amount was actually paid out to the designated agency and the amount actually paid to them. Granted, the notice did not apply to payroll deduction contribution which would reduce the volume substantially, we believe that the administrative burden of attempting to provide this information would be astronomical for United Ways and even more so for those of us who are PCFOs of Combined Federal Campaigns (which are 100% designated).

Therefore, on January 16, 2008 representatives of United Way of America joined Mr. Mark Lambert, Director of CFC Operations, US Office of Personnel Management in a meeting with representatives of the Internal Revenue Service to discuss Notice 2008-16. The meeting was productive on several fronts but some work remains to be done in addressing our current and future concerns. It is our goal and expectation that we will ultimately be successful in convincing the IRS to delay implementation of this notice but in the mean time, we offer this interim guidance to our members on how to comply with the notice.

When must a receipt be issued to a donor?

The short answer is, when the charity decides it wants to. The IRS regulations do not required charities to issue receipts for donations (there is no penalty for not issuing one) but they do require donors to be able to substantiate any contribution in excess of \$250 in order to take a deduction. As indicated earlier, Notice 2006-110 made it necessary for donors to be able to substantiate all contributions in order to take a deduction. Whether or not you issue receipts to those donors who have not requested one is still up to you to decide, ultimately it is a donor relationship issue.

Thus, as a customer service, many of us have gotten in the habit of issuing receipts automatically for all contributions over some threshold. Since the issuance of Notice 2006-110, you have been expecting an increase in requests for receipts overall this year and gearing up to meet that demand but now you need to consider whether or not you will change your format to include the information required by Notice 2008-16.

If the donor paid by check or credit card, is the canceled check or credit care receipt enough?

Yes. The IRS rules state that the donor must maintain a bank record **or** a written acknowledgement. **HOWEVER**, In the case of a written acknowledgement provided to the donor, it will not be considered sufficient to document a deductible contribution unless the documentation contains four points of information, namely:

- The date of the contribution
- The amount of the contribution
- The name of the donee organization (in our case the United Way or PCFO)
- The name of the donee organization that is the ultimate recipient of the charitable contribution (in our case the designated organization)

(the fourth point is the new point required under Notice 2008-16)

What if they gave me Cash (e.g. US legal tender), what information must be included on the receipt?

The rules here have changed. A written acknowledgment must contain:

- The date of the donation
- The amount of the donation
- The name of the recipient organization (in our case the United Way or PCFO)
- The name of the donee organization that is the ultimate recipient of the charitable contribution (in our case the designated organization)
- A statement whether the donee organization provided any goods or services in consideration for the contribution **and** a description and “good faith” estimate of their value *(Note – if the value of any goods or services provided is deemed “insubstantial” as defined in IRS Publication #1771, they do not have to be valued or described)*

(the fourth point is the new point required under Notice 2008-16)

How are the Payroll deduction rules different?

When a donor makes a contribution by payroll deduction, the donor must have the following documents to substantiate the deduction:

- A pay stub, W-2 or other document furnished by the employer that indicates the amount withheld during the tax year for payment to the donee organization **and,**
- A pledge card, or other document prepared by the donee organization that shows the donee organization name (in our case the United Way or PCFO)

Note: If the donor makes a single donation (not the sum for the year) in excess of \$250 by payroll deduction, then the pledge card or other documentation must also include a statement that the organization does not provide goods or services in consideration for any contributions made by payroll deduction. We understand this to mean goods or services other than those considered “insubstantial” as defined in IRS Publication #1771

When must the donor receive the receipt?

The rules have not changed here. For a written acknowledgement to be considered contemporaneous with the contribution, a donor must receive the acknowledgement by the earlier of:

- The date on which the donor actually files the tax return claiming the charitable deduction or
- The due date (including extensions) of the tax return.

When do these rules go into effect?

Taxpayers claiming charitable contribution deductions for gifts made in taxable years beginning after August 17, 2006 will need to comply with the new rules for substantiation of contributions. Since most individual taxpayers are “calendar year” taxpayers, they will need to meet the new level of substantiation when they file their 2007 tax returns between now and April. Thus,

- For payroll deduction pledges made in the Fall 2006 campaigns, the donors will need copies of their pledge forms when they file between now and April, just like they always have needed.
- For other forms of contributions made (cash, check, etc.) after December 31, 2006, the donor will need a receipt for every contribution, regardless of amount between now and April.

What if I already issued acknowledgements and they didn't include the info on designations?

Likely, there will be little immediate repercussion but long term here is what may happen:

- Some donors who are either very informed about the tax rules or use tax preparers who are, may come back to you and ask for a corrected acknowledgement. If this happens, good customer service would dictate that you look up the designation information and reissue their acknowledgement.
- Some donors who are eventually audited may come back to you and ask for a corrected acknowledgement. If this happens, good customer service would dictate that you look up the designation information, reissue the acknowledgement, and be sure to note on the reissued document that it is replacing one that was incorrectly prepared on a prior date (include that date). This will be important for the donor because you are helping them to establish that the reason they did not have the information within the required time (see above) is due to no fault of their own. Hopefully this will be sufficient for the IRS to allow the deduction.

What will UWA be doing relative to these issues going forward?

We will be asking the IRS to withdraw this new requirement due to the administrative burden it imposes on Federated Fundraising Organizations (organizations like United Ways and PCFOs) but if they are unwilling to do so, we are asking them to at least delay implementation of the new requirement of designation information until tax years beginning after December 31, 2007.

- The delayed implementation would mean that no one whose 2007 tax return is audited would lose their deduction simply because the acknowledgement they received from you did not have the designation information on it originally.
- We are currently drafting a request to this effect to the US Department of Treasury and are hopeful that they will concede to it but there are no guarantees

We are also hoping to consult further with IRS during the course of 2008 on how to address their other issues. They have already listened to our arguments against including information on what was paid over to the designated agency and when. At that meeting they indicated initial willingness to discuss other options with us that would allow them to enforce a specific section of the tax code without placing undue burden on the Federated Fundraising Organizations.

As with all things here in Washington, DC, this takes time. We will keep you posted of our progress and urge you to stay tuned to things like the CFO List Serve and Breakfast Online for further developments.

What should I be doing relative to these issues going forward?

More than likely you are starting to receive requests from donors for “receipts” or are in the process of sending out your standard acknowledgements to donors so here are a few suggestions for you to consider:

- Share this document with your company campaign representatives and talk to them about your customer service needs such that you both know that there may be a need to discuss the level of information provided to each other.
(Note: if the company does not provide you with sufficient donor level detail for you to issue receipts on demand, you will need to know how to garner the info from the company on short notice or you will need to help the company prepare to respond to requests from their employees on your behalf)
- Prepare a statement that you can give to donors who call about the new rules letting them know that the information they need to know about documenting tax deductible donations can be found in IRS Publication # 1771. *(Note: it is always advisable to tell them that they should consult their tax advisor for more information about what they need so that you are not construed to have given the donor tax advice)*
- Print a supply of blank, two part, receipts for cash contributions that include the necessary components/disclosures, so that they are available for use for new contributions in 2008.
- Start talking to the companies that are heavily involved in the data collection for their own campaigns about whether or not they are providing you with sufficient data to provide donors with receipts.
- Take another look at your “e-campaigns” to make sure that donors can print an acknowledgement after donating and that the acknowledgment contains the required info.
- Start thinking about changes you may need to make to your pledge forms for the fall 2008 campaign to assure that you are meeting the disclosure requirements.
- Start thinking about the level of customer service you can/will provide and whether or not you will need to change your procedures or software in order to be able to automatically issuing receipts that include designation information.

Where do I go for answers to my additional questions?

Aside from going to the IRS website (www.IRS.gov) to get the most recent version of Publication #1771, contact Ken Euwema, Vice President – Membership Accountability, United Way of America at ken.euwema@uwa.unitedway.org