

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



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CFC MEMORANDUM 2008-3

TO: LOCAL FEDERAL COORDINATING COMMITTEES AND PRINCIPAL
COMBINED FUND ORGANIZATIONS

FROM: MARK W. LAMBERT
DIRECTOR, OFFICE OF COMBINED FEDERAL CAMPAIGN
OPERATIONS

RE: IRS NOTICE 2008-16 RECORD KEEPING REQUIREMENTS FOR
SUBSTANTIATING A DONOR'S TAX DEDUCTION

The Pension Protection Act of 2006 included a number of provisions which were specifically targeted at the not-for-profit sector. 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. Previously, tax deductible contributions in excess of \$250 needed to be substantiated by a "contemporaneous written acknowledgement of the contribution by the donee organization." See, 26 U.S.C. § 170(f)(8). For purposes of the substantiation requirement, the IRS regulations considered a CFC Principal Combined Fund Organization (PCFO) to be treated as a donee organization. See, 26 C.F.R. § 1.170A-13(f)(12).

The Pension Protection Act added a recordkeeping requirement that tax deductible contributions *of any size* be supported by "a bank record or a written communication from the donee showing the name of the donee organization, the date of the contribution, and the amount of the contribution." See, 26 U.S.C. § 170(f)(17).

The IRS issued Notice 2006-110 to explain how to satisfy the recordkeeping requirement in the case of payroll deduction contributions. Notice 2006-110 provided that for payroll deductions made in taxable years beginning after August 17, 2006, the IRS considered a CFC Principal Combined Fund Organization (PCFO) to be treated as a donee organization for purposes of the 26 U.S.C. § 170(f)(17) recordkeeping requirement.

On January 8, 2008 the IRS issued Notice 2008-16 which established requirements for substantiating the tax deductibility of lump sum contributions (defined by the IRS as all non-payroll deduction

contributions) made through the CFC in taxable years beginning after August 17, 2006. In the case of the CFC, a “lump sum contribution” will generally mean a cash or check contribution.

The U.S. Office of Personnel Management (OPM) is concerned with a number of the requirements and potential requirements of Notice 2008-16 and has discussed with and written the IRS about these concerns. Until we receive a response from the IRS, PCFOs must follow this guidance when requested by a donor to provide a receipt.

Under what circumstances must a receipt be issued to a donor?

It is the donor’s responsibility to request a receipt to substantiate his/her tax deduction. Therefore, a PCFO does not have to issue a receipt unless requested to do so by a donor. However, OPM strongly encourages PCFOs to be especially proactive in providing receipts to donors who make cash/check/money order contributions in excess of \$250 as a matter of good customer service. A PCFO may issue a receipt to a donor even if the donor has not authorized the release of his/her name to the charitable organization. OPM will not consider the issuance of a receipt, whether requested by a donor or provided by the PCFO as a proactive service, to be a violation of 5 C.F.R. § 950.601(c) which states that the PCFO will not sell or make any other use of the contributor information, if the use of the information is solely to send the donor a receipt regarding his or her own contribution in order to meet IRS requirements for substantiating a tax deduction.

If the donor paid by cash or check, what constitutes a sufficient receipt?

Contributions of \$250 or less.

For contributions of \$250 or less, the IRS requires the donor to maintain a record of the contribution. The record must be:

- A bank record; or
- A written communication from the PCFO containing:
 - ✓ The name of the PCFO;
 - ✓ The name of the charitable organization(s) designated to receive the contribution).
(Note: The IRS will accept the unique five-digit code as the name of the organization since it can be determined from the CFC Charity List)
 - ✓ The date of the contribution; and
 - ✓ The amount of the cash or check.

Therefore if the donor contributed by check, a copy of the canceled check or a bank or credit union statement will serve as a sufficient record. If the donor contributed by cash, the donor will need to obtain a written communication from the PCFO to substantiate contribution. Although credit card contributions are not currently generally approved by the OPM Director within the CFC, to the extent they do become approved, a credit card contribution may be substantiated with the donor’s credit card statement. The CFC regulations allow for future CFCs to accept contributions by electronic means, including credit cards if approved by the OPM Director.

Alternatively, if the pledge form accompanying the cash or check contribution contains the four items indicated above as required for a written communication from the PCFO, then a copy of

the pledge form, together with an indication that the pledge form and contribution have been accepted by the PCFO, may be provided to the donor as a sufficient record.

Contributions over \$250.

For contributions in excess of \$250, the IRS requires the donor to maintain the record described above (for contributions below \$250) and ***in addition***, the donor will be required to substantiate the contribution. The additional requirements for substantiation are:

- A contemporaneous written acknowledgement from the PCFO containing:
 - ✓ Description of any property other than cash;
 - ✓ Statement whether PCFO provided any goods or services in consideration for the contribution; and
 - ✓ Description and good faith estimate of the value of any goods or services provided in consideration for the contribution, or if the goods and services consist solely of intangible religious benefits, a statement to that effect.
(Note: If the value of token goods or services provided is “insubstantial” as defined in IRS Publication 1771, they do not have to be described.)

Separate contributions of less than \$250 will not be aggregated. Therefore, multiple lump sum contributions made by cash or check by a single donor will not be aggregated even though the donor’s annual total contributions are \$250 or more.

In order to provide the written communications described above, the PCFO must have sufficient information with which to document the contribution. Therefore, the PCFO may request the donor to provide the PCFO with a copy of the canceled check, unless the PCFO can determine from its own records that a check has been received and cashed by the bank. If a donor contributes cash, it is up to the donor to obtain a receipt from the keyworker or Federal Agency, which he or she may present to the PCFO as documentation of a cash contribution. Without this documentation, the PCFO may not have sufficient evidence of a contribution to the CFC with which to issue a receipt.

What if the cash or check contribution was made at a CFC special fundraising event where a good or service was provided by the Federal Agency?

It is generally believed that donors who make a cash or check contribution at a CFC special fundraising event do not intend to take their contribution as a tax deduction.

However, if a donor contacts the PCFO for a receipt, the PCFO should ask if the contribution was made at a CFC special fundraising event. Generally, a contribution may not be deductible or may only be partially deductible if the donor receives a good or service in return for his or her contribution. If the donor can substantiate the amount contributed, the PCFO may issue a receipt following the guidance in the previous question, which will depend upon whether the contribution was \$250 or less, or was over \$250. The PCFO should advise the donor to check Internal Revenue Service (IRS) Publication 526 or to discuss with his or her tax advisor whether any of the contribution made at a CFC special fundraising event is deductible.

What if the donor's contribution is not designated to a specific organization(s)?

The IRS has informally indicated that in these circumstances, it will recognize the contribution as being made to the CFC directly and the PCFO can issue a receipt listing itself as the ultimate recipient of the contribution on behalf of the CFC.

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 PCFO **and**,
- A pledge form, or other document prepared by the PCFO that shows the PCFO's name.

The requirements for contributions over \$250 only apply for a payroll deduction contribution if the amount of any single payroll deduction is in excess of \$250. Therefore, if the donor makes any single payroll deduction donation -not the sum for the year- in excess of \$250, then the pledge form or other document 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?

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.

The acknowledgement is typically sent to the donor by January 31 of the year following the donation.

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. The IRS Notice requirements apply as follows:

- Notice 2006-110 - Payroll deduction pledges made in the Fall 2006 campaigns (withheld between January 2007 and December 2007). Donors may be contacting PCFOs to request copies of lost pledge forms.

- Notice 2008-16 - Lump Sum contributions (cash, check, money order) made in the Fall 2007 CFC (between September 1 and December 31, 2007). Donors may be contacting PCFOs to request written communications.

What if I already issued written communications and they didn't include the name or code numbers of designated charitable organizations?

- Some donors who are either very informed about the tax rules or use tax preparers who are very informed about the tax rules, may come back to you and ask for a corrected acknowledgement. If this happens, 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, 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.

What should I do 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:

- 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. It is always advisable to tell the donor that he/she should consult their tax advisor for more information about what they need so the donor understands that you are not providing tax advice.
- Print a supply of blank, two-part receipts for cash/check/money order contributions that include the necessary components/disclosures, so that they are available for use by keyworkers for new contributions in 2008.
- Review your online automated pledge systems used within the CFC to make sure donors can print an acknowledgement after donating and that the acknowledgment contains the required information.
- Evaluate 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 issue receipts that include designation information.

Where do I go for answers to my additional questions?

You can go to the IRS website (www.IRS.gov) to get the most recent version of Publication 1771 and Publication 526. If you have further questions or comments, please contact your CFC Regional Representative at cfc@opm.gov or on (202) 606-2564.