

taxpayers who claim a deduction for a charitable contribution of \$250 or more are responsible for obtaining from the donee organization, and maintaining in their records, substantiation of that contribution. See H.R. Conf. Rep. 2264, 103d Cong., 1st Sess. 565 (1993). Specifically, section 170(f)(8) provides that no charitable contribution deduction will be allowed under section 170(a) for a contribution of \$250 or more unless the taxpayer substantiates the contribution with a contemporaneous written acknowledgment from the donee organization.

Section 170(f)(8)(B) provides that an acknowledgment meets the requirements of that section if it includes the following information: (1) the amount of cash paid and a description (but not necessarily the value) of any property other than cash transferred to a donee organization; (2) whether or not the donee organization provided any goods or services in consideration for the cash or property; and (3) a description and good faith estimate of the value of any goods or services provided by the donee organization in consideration for the cash or property. A written acknowledgment is contemporaneous, within the meaning of section 170(f)(8)(C), if it is obtained on or before the earlier of: (1) the date the taxpayer files its original return for the taxable year in which the contribution was made, or (2) the due date (including extensions) for filing the taxpayer's original return for that year.

Section 170(f)(8) does not prescribe a format for the written acknowledgment. Any document that contains the required information, including but not limited to a letter, postcard, computer-generated form, or tax form, is an acceptable means of providing a taxpayer with a written acknowledgment. For example, a private foundation may use a copy of its Form 990-PF, Return of Private Foundation, as a written acknowledgment for a taxpayer's charitable contribution of \$250 or more if it contains the necessary information. Any documents that are used as a written acknowledgment of a taxpayer's charitable contribution must be contemporaneous within the meaning of section 170(f)(8)(C).

Section 6115 generally requires an organization described in section 170(c) that receives a "quid pro quo contribution" in excess of \$75 to provide a written disclosure statement to the donor. The written disclosure statement must contain the following information: (1) a statement that the deductibility of the donor's contribution is limited to the excess of the amount of

any money or the value of any property contributed by the donor over the value of the goods or services provided to the donor by the organization, and (2) a good faith estimate of the value of the goods or services provided by the organization. Section 6115(b) defines a quid pro quo contribution as a payment made partly as a contribution and partly in consideration for goods or services provided by the organization.

Explanation of Regulatory Provisions

Deductibility of a Payment in Exchange for Consideration

In *United States v. American Bar Endowment*, 477 U.S. 105 (1986), the Supreme Court set forth a two-part test for determining whether a payment that is partly in consideration for goods or services is deductible under section 170(a). First, a payment to an organization described in section 170(c) is deductible only if, and to the extent that, the payment exceeds the fair market value of the benefits received. Second, the excess payment must be made with the intent to make a charitable contribution. See also Rev. Rul. 67-246, 1967-2 C.B. 104.

The proposed regulations adopt this two-part test for determining whether a payment is deductible under section 170(a). Specifically, the regulations provide that, in order for a charitable contribution deduction to be allowed, a taxpayer must intend to make a payment in an amount that exceeds the fair market value of the goods or services received in return, and must actually make a payment in an amount that exceeds that fair market value.

Certain Goods or Services Disregarded

Under current law, a taxpayer who receives membership benefits in return for a payment to an organization described in section 170(c) may not claim a charitable contribution deduction for more than the amount by which the payment exceeds the fair market value of the membership benefits. *United States v. American Bar Endowment*, 477 U.S. 105 (1986). See also Rev. Rul. 68-432, 1968-2 C.B. 104; Rev. Rul. 67-246, 1967-2 C.B. 104. Accordingly, taxpayers and donee organizations must determine the fair market value of any membership benefits the donee organization provides to its donors.

It is often difficult to value membership benefits, especially rights or privileges that are not limited as to use, such as free or discounted admission or parking, and gift shop discounts. In the course of preparing these proposed regulations, the IRS and

the Treasury Department have considered the extent of the difficulty of valuation and have concluded that it is appropriate to provide limited relief with respect to certain types of customary membership benefits while preserving the IRS's ability to administer the law fairly and consistently. Accordingly, the proposed regulations provide that both the donee organization and the donor may disregard certain membership benefits when they are provided in return for a payment to the organization.

Section 1.170A-13T(a) already allows donors and donee organizations to disregard goods or services that are treated as having insubstantial value under existing IRS guidelines. See Rev. Proc. 90-12, 1990-1 C.B. 471, and Rev. Proc. 92-49, 1992-1 C.B. 987. The guidelines cover low cost articles (items costing \$6.60 or less for 1995), newsletters that are not commercial quality publications, and benefits worth 2% or less of a payment, up to a maximum of \$66 for 1995. The substance of this section has been incorporated into section 1.170A-13(f)(8)(i).

Under the proposed regulations, other benefits may be disregarded only if they are given as part of an annual membership offered in return for a payment of \$75 or less and fall into one of two categories. The first category is admission to events that are open only to members and for which the donee organization reasonably projects that the cost per person (excluding allocable overhead) for each event will be less than or equal to the standard for low cost articles under section 513(h)(2)(C) (\$6.60 for 1995). An example is a modest reception where light refreshments are served to members of a donee organization before an event. The second category is rights or privileges that members can exercise frequently during the membership period. An example is free admission to a museum.

The items described in the previous two paragraphs may be disregarded for purposes of determining whether the taxpayer has made a charitable contribution, the amount of any charitable contribution that has been made, and whether any goods or services have been provided that must be substantiated under section 170(f)(8) or disclosed under section 6115. Thus, the effect of these provisions is broader than that of the temporary regulations, which provided less comprehensive relief and then only for items of insubstantial value.