M. SPECIAL EMPHASIS PROGRAM – CHARITABLE FUND-RAISING

1. Introduction

In August 1988, the Service sent Publication 1391, Deductibility of Payments Made to Charities Conducting Fund-Raising Events, to over 400,000 IRC 501(c)(3) organizations. Publication 1391 contains a message from Commissioner Gibbs announcing a Special Emphasis Program in this area and asking charities for their help in informing contributors more accurately about the deductibility of contributions made in connection with fund-raising events.

Many charities, in an effort to increase revenues, conduct fund-raising events that offer benefits to their patrons in return for contributions. Many of these activities are traditional - charities have historically sponsored such activities as athletic events, banquets, bazaars, charity balls, and shows.

The Code has not and currently does not require charities to advise potential contributors about the proper tax treatment of payments made in connection with these events. Generally, charities have told patrons that "contributions are tax deductible" or "contributions are deductible to the extent provided by law" if they have said anything. In recent years, however, the intense competition for charitable funds has given rise to the use of more misleading representations about "contributions." For example: benefit auctions where checks are accepted that bear the notation "contribution", "free" lectures that require a "donation" to attend, and offers of "premiums" - a $400 television, in return for a "tax-deductible contribution of $500." In all these situations, the patron is receiving something of value in return for the "gift", and in all these situations there is a question as to what extent, if any, the "gift" is deductible as a charitable contribution under IRC 170.

Recently, the Congress expressed its "concern" that charities do not accurately inform patrons of these activities of the extent to which payments are deductible. This Topic discusses the Congressional and Service concerns, as well as the steps the Service is taking to deal with the problem.

2. Position of Congress

On June 8, 1987, the Oversight Committee of the House Ways and Means Committee issued its Report on Lobbying and Political Activities by Tax-Exempt Organizations. The Report was based on hearings held by the Subcommittee on March 12 and 13 of that year. One of the Report's principal findings was that public disclosure and accountability by tax-exempt organizations, not only regarding political activities, but also with respect to tax deductibility of contributions, is often deficient or misleading, and sometimes is absent.

Many of the Report's recommendations resulted in legislation enacted as part of the "Omnibus Budget Reconciliation Act of 1987" (OBRA). One statute, IRC 6113, followed up on the Subcommittee's finding that tax-exempt organizations that are not IRC 501(c)(3) organizations solicit contributions or other support without informing potential contributors that their payments are not deductible as charitable contributions. IRC 6113, therefore, requires tax-exempt entities other than IRC 501(c)(3) organizations (including political organizations) to include in their fund-raising solicitations an express statement, in a conspicuous and easily recognizable format, that contributions to the organization are not deductible as charitable contributions for federal income tax purposes. (IRC 6113 is discussed further in the topic on OBRA.)

OBRA contained no provision dealing with the fund-raising practices of charitable organizations. Congress, however, recognized that there are significant problems in this area. The House Budget Committee, in its Report on OBRA, pp. 1607 and 1608, made the following remarks:

> ...the committee also is concerned that some charitable organizations may not make sufficient disclosure, in soliciting donations, membership dues, payments for admissions or merchandise, or other support, of the extent (if any) to which the payors may be entitled to charitable contributions for such payments.
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> This area of concern has not been addressed in the bill itself because it does not involve the nondeductibility of contributions to noncharitable organizations that engage in political campaign activities. However, the committee anticipates that the Internal Revenue Service will monitor the extent to which taxpayers are being furnished accurate and sufficient information by charitable organizations as to the nondeductibility of payments to such organizations where benefits or privileges are received in return, so that such taxpayers can correctly

> compute their federal income tax liability. The committee also anticipates that groups representing the charitable community will further educate their members as to how charities can provide appropriate information to their supporters in this regard.

The House Budget Committee Report indicates two things to charities - the Congress expects more accurate and sufficient information to be furnished to fund-raising patrons and, it may well enact legislation similar to IRC 6113 if it perceives the need to do so. The Committee Report also contains a message to the Service - the expressed "anticipation" that the Service will "monitor" the quantity and quality of the information charities provide to their fund-raising patrons should be treated as an invitation to actively oversee the area.

3. <u>Service Activity Prior to OBRA</u>

A. <u>Educating the Public</u>

Once before, in the late 1960s, the Service tried to encourage a voluntary effort in this area. One aspect of this was a campaign to inform the public about the basic rules governing deductibility.

The Service's technical position was announced by the publication of Rev. Rul. 67-246, 1967-2 C.B. 104. In order to inform charities of the need for voluntary compliance, Rev. Rul. 67-246 was sent to organizations that receive tax-deductible contributions. In a letter that was sent with the Rev. Rul., the Commissioner asked charitable organizations for their help in more accurately informing taxpayers of the deductibility of payments by patrons of fund-raising events.

In many ways, the issuance of Publication 1391 was modeled on this earlier mailout. Rev. Rul. 67-246 remains an accurate statement of Service position. Moreover, since Rev. Rul. 67-246 was written to encourage charities to provide this kind of information to their contributors, it emphasizes many of the same issues that need emphasis in the current effort. (Rev. Rul. 67-246 will be covered in greater detail in the discussion of Publication 1391, below.)

B. <u>The Issues of Restraining Actions and Criminal Penalties (G.C.M. 33431)</u>

At the same time, the Service considered pursuing restraining actions in cases involving misleading statements made by charitable organizations as to the deductibility of contributions made to them.

The issue was referred to Chief Counsel, which responded, on February 15, 1967, with G.C.M. 33431. G.C.M. 33431 stated that the Commissioner had the right and the power to seek injunctive relief in cases where an organization is making misleading statements concerning the deductibility of contributions to potential contributors. (IRC 7401, which concerns the jurisdiction of federal district courts, was cited in support of this statement.) The G.C.M. concluded, however, that injunctive relief was not a viable option - it either is impossible to obtain (because of the burden of proving the damage resulted from the misrepresentation), or it comes too late (because you cannot enjoin an act that already has been committed.)

G.C.M. 33431 also discussed the use of IRC 7206, which relates to fraud and false statements, as a possible means of curbing abuses. Since IRC 7206 is one of the criminal provisions of the Code, the G.C.M. concluded that there would be formidable difficulties of proof in any attempt to use the statute to prevent the use of such misstatements. Furthermore, the G.C.M. commented that the use of such a provision to discourage a charity's misleading statements would be too extreme a measure except in a most flagrant case. The G.C.M., instead, noted: "... there can be little dispute but that an 'educational' effort by the Service would prove to be the most realistic and effective approach and the one most productive of the voluntary compliance on which our system of taxation ... depends."

It should be noted that at the time G.C.M. 33431 was issued there was no civil penalty comparable to IRC 6701, which is discussed below.

C. <u>Instructions to the Field - IRM 7(10)64</u>

As a follow-up to the publication of Rev. Rul. 67-246, IRM 7(10)64, Erroneous or Misleading Advertisement of Charitable Fund-Raising Affairs, was issued. At the present time, these are the only specific instructions in the Manual. As the Special Emphasis Program develops, further instructions will be issued.

IRM 7(10)64 provides as follows:

(1) A copy of Rev. Rul. 67-246 should be given to sponsors of fund-raising events who seek assistance in determining the deductible portion of amounts received.

(2) Where district offices note erroneous or misleading advertisements by sponsors of fund-raising affairs, the sponsors should be promptly contacted by telephone and advised of the provisions of Rev. Rul. 67-246. Initial contact may be made in person or by phone; however, in all cases a formal letter should be sent with Rev. Rul. 67-246 enclosed.

(3) In those instances where the solicitation advertisements are a flagrant disregard of the law or regulations or the sponsors refuse to cooperate with the Service and persist in misleading the public, a local news release should be issued warning potential contributors that they may not rely on such statement. However, concurrence of the Assistant Commissioner (EP/EO) should be obtained by phone prior to releasing any such notice to the public.

4. The American Bar Endowment Case

In 1986, the Supreme Court reaffirmed the rules contained in Rev. Rul. 67-246 in United States v. American Bar Endowment, 477 U.S. 105. The American Bar Endowment, a charitable arm of the American Bar Association (ABA), offered group life insurance to members of the ABA at a cost that was competitive with other insurers. However, the endowment retained excess premiums that were refunded from the insurer and used them for its charitable program. Had it instead returned the excess premium payments to its participants, the costs to the participants would have been lower.

One issue in the case involved several individual participants who had claimed a tax refund on the basis that their excess premium payments over the actual cost of the insurance constituted a contribution to the Endowment for which a charitable deduction under IRC 170 was allowable. In rejecting the claim of these participants, the Court held that the claimants had failed to meet their burden of showing that they purposely contributed money in excess of the value of any benefit received in return. In this case, the claimants did not demonstrate that at the time they purchased their insurance both that there were cheaper policies available elsewhere and that they actually knew about these policies. Consequently, there was no showing that they intentionally gave away more than they received. Based on this reasoning, a deduction under IRC 170 was disallowed.

5. Publication 1391

The Service response to the expression of Congressional concern about charitable fund-raising was the initiation of the Special Emphasis Program on Fund-Raising Practices. The message from the Commissioner contained in the publication states:

> Because of this expression of Congressional interest, as well as the continued concern of the IRS, I shall institute a Special Emphasis Program for the 1988 tax year. It will focus on the fund-raising practices of charitable organizations, as well as organizations that perform fund-raising functions for charities. Through the Special Emphasis Program the IRS shall seek to ascertain the extent to which taxpayers are furnished accurate and sufficient information concerning the deductibility of their contributions.

The Special Emphasis Program contains two components - a public information phase to provide charities with the information they need to voluntarily comply with the Congressional goal of "accurate and sufficient" disclosure on deductibility and an examination phase. The purpose of the examination phase is to educate charities on appropriate disclosure, to measure the level of voluntary compliance with the Congressional goal, and to deal with abuse to the extent possible under existing law.

Publication 1391 also contains a copy of Rev. Rul. 67-246. Rev. Rul. 67-246 describes the rules on deductibility applicable to fund-raising events. It also gives a number of examples of how these rules apply in common situations.

The basic rule of Rev. Rul. 67-246 (reprinted as Appendix A) is that to be deductible as a charitable contribution, a payment to a charity must be a gift, that is, a voluntary transfer of money or other property that is made with no expectation of procuring a financial benefit commensurate with the amount of the transfer. Where consideration in the form of substantial benefits is received in connection with payments by patrons of fund-raising activities, there is a presumption that the payments are not gifts, and that the total amount paid represents the fair value of the benefits received in return. For example, an admission charge to a charitable benefit accordingly is not deductible unless the charge is higher than the fair market value of the admission.

The burden is on the taxpayer to show that what was paid to the charity exceeds the fair market value of the goods or services received in return. Only to the extent that it can be shown that the payment exceeds the fair market value of the benefits received in return will a charitable deduction be allowed.

This is not the end of the inquiry. There should also be evidence that the excess of payment over fair market value was made with the intention of making a gift. Proof of such intent may not be essential in some circumstances and may in fact be inferred in certain cases, but it is highly relevant in overcoming doubt where there is a question whether an amount was really paid as a gift or as part of the purchase price.

As indicated above, Rev. Rul. 67-246 contains a number of examples illustrating this rule. In one situation, M charity sponsors a symphony concert for the purpose of raising funds for its charitable programs. M agrees to pay a fee which is calculated to reimburse the symphony for hall rental, musicians' salaries, advertising, and printing of tickets. Under the agreement, M is entitled to all receipts from ticket sales. The prices M charges approximate the established admission charges for concert performances by the symphony orchestra. The advertising material promoting the concert and the tickets emphasize that the concert is sponsored by, and is for the benefit of M.

Notwithstanding the fact that taxpayers who acquire tickets to the concert may think they are making a charitable contribution to or for the benefit of M, no part of the payments made is deductible as a charitable contribution. Since the payments approximate the established admission charge for similar events - the fair market value, there is no gift. The result would be the same even if the advertising material promoting the concert stated that the payments for the tickets are "tax deductible". Acquisition of the tickets or other privileges in reliance on statements made by a charitable organization that the amounts paid are deductible does not convert an otherwise nondeductible payment into a deductible charitable contribution.

Another example involves charity X that sponsors a fund-raising bazaar. The articles for sale at the bazaar have been contributed by individuals desiring to support X's charitable programs. The prices of the articles sold at the bazaar are set by a committee of X with a view to charging the full fair market value of the articles.

A taxpayer who purchases articles at the bazaar is not entitled to a charitable contribution deduction even though the articles were acquired by X without cost and the proceeds are used exclusively for charitable purposes. The measure of deductibility is fair market value, not cost. In this situation, X should not be representing that the purchase price is deductible.

There are, of course, any number of questions such as whether amounts paid for lottery tickets, etc., qualify as deductible charitable contributions. Many of these questions are discussed in the examples contained in Rev. Rul. 67-246. Others are covered in the supplemental material discussed below. As the Special Emphasis Program develops, further guidance will be provided.

Since it was written, in 1967, as a document to be sent to charities, Rev. Rul. 67-246 stresses the role that charities can play both in informing their contributors about the proper tax treatment of payments relating to fund-raising events and in overcoming the presumption, discussed above, that these payments are not gifts. Charities are advised:

> To do this, the amount properly attributable to the [fair market value] of admissions or other privileges and the amount solicited as a gift should be determined in advance of solicitation. The respective amounts should be stated in making the solicitation and clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.
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> Where the affair is <u>reasonably comparable</u> to events for which there are established charges ..., such as theatrical or athletic performances, the established charges should be treated as fixing the fair market value of the admission or privilege. Where the amount paid is the same as the standard admission charge there is, of course, no deductible contribution, regardless of the intention of the parties. Where the event has no such counterpart, only that portion of the payment which exceeds <u>a reasonable estimate</u> of the fair market value of the admission or other privileges may be designated as a charitable contribution. **(emphasis added)**

Thus, the thrust of Rev. Rul. 67-246 is that valuations are to be reasonable. If charities can be persuaded that voluntary compliance on these terms is in their interest, there are many salutary effects. As the Commissioner notes in his message:

> By following this rule, the organization engaged in fund-raising events will be helping taxpayers comply with the income tax laws, as well as avoiding possible embarrassment to itself and its patrons.

6. Supplemental Material

An important step in the Special Emphasis Program is to alert the charitable community to the Congressional concern and the importance of responding positively to it. The Service is actively publicizing the Program and working with voluntary groups to educate their members on the rules governing deductibility. The American Bar Association, for example, has assisted us in preparing a series of questions and answers (Q's and A's) for use as fact sheets in our Public Affairs Offices and by our Taxpayer Service representatives. (The Q's and A's were published in the Bureau of National Affairs Daily Tax Report on September 26, 1988, and were attached to a memorandum from the National Office's EP/EO Operations Division to all Assistant Regional Commissioners (except North Atlantic) and to the District Director of the Brooklyn District.

These Q's and A's are reprinted as Appendix B. They were intended to supplement Rev. Rul. 67-246. Several issues are, however, worth highlighting.

> **Q7**: Must the amount of the charitable contribution deduction otherwise available to the transferor of property that is to be used by a charity as a prize in a raffle or lottery be discounted to any extent because the transferor will be identified as the source of the property and the benefactor of the charitable transferee?
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> **A7**: No discount will be required. The identification of the transferor as the benefactor of the charity is not treated as a substantial benefit to the transferor. (See, e.g.. Rev. Rul. 66-358, 1966-2 C.B. 218).

The issue of the substantiality of benefits is also present where a contributor receives something of value in return for a contribution. Rev. Rul. 67-246 provides that the presumption that the transaction is not a gift arises when something of substantial value is received in return for a contribution. As Q and A No. 7 indicates, special identification or recognition, alone, do not have substantial value. Charities have used this kind of recognition as an inducement for patrons of fund-raising events. It is frequently a feature of structured pricing arrangements for various benefits and privileges. For example, some charities have used a pricing system that allows contributors to separate their contributions from the value of the benefit such as where tickets to benefit dinners or other events are sold to the public. Individuals who wish to donate additional amounts may do so by purchasing tickets as "friends" of the charity for amounts in excess of the price of the public sale. Typically, "friends" of the charity are listed in the program for the event. This kind of pricing structure can be used to determine the fair market value of the event. Since the special recognition does not have substantial value, the fair market value is the price of tickets that are sold to the public.

The Service has not provided any further specific guidance on the issue of substantiality of benefits. It is fair to say, however, that, where a benefit has only nominal or token value, contributions are fully deductible.

Charities occasionally sponsor special travel packages or arrange for working vacations either to raise funds or to encourage patrons interest in their programs. As a fund-raising device, special travel packages involve many of the issues previously discussed. For example, we have seen one charitable organization's solicitation for a group tour of professionals that ostensibly has the primary purpose of meeting the leading Soviet professionals in the same discipline. However, the specifics of the meetings are sketchy, to say the least, and the tour appears to spend the majority of its time sightseeing at various locations in the Soviet Union and eastern Europe. The solicitation states that a traveler may be to take a business deduction for herself or himself, while the traveler's spouse or traveling companion may be able to deduct a portion of their expenses as a charitable contribution to the sponsoring organization's scholarship program. The cost of the trip appears to be comparable to that of other group tours.

Leaving aside the question of the actual primary purpose of the trip and the propriety of a business deduction, there appears to be no basis for a charitable deduction for the spouse or traveling companion. The cost of the trip seems to be commensurate with its value.

Where charities arrange working vacations for patrons, the issue of IRC 170 deductions for out-of-pocket expenses comes into play. Occasionally, charities, in their solicitation materials, will offer patrons the opportunity to participate in working vacations. The solicitations represent that out-of-pocket expenses such as those for meals and lodging are deductible under IRC 170. This practice raises the question of the applicability of IRC 170(k).

IRC 170(k) provides that amounts expended for traveling while away from home (and engaged in activities that further charitable purposes), are not deductible under IRC 170 unless "there is no significant element of personal pleasure, recreation, or vacation in such travel." Q and A No. 6 is aimed at this issue.

> **Q6**: Is a deduction allowable for travel expenses incurred in performing services away from home on behalf of a qualified charitable organization?
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> **A6**: No deduction is allowable for such expenses, whether paid directly by the individual or indirectly through a contribution to the organization, unless there is no significant element of personal pleasure, recreation, or vacation in the travel. For example, a taxpayer who sails from one Caribbean island to another and spends eight hours a day counting whales and other forms of marine life as part of a project sponsored by a charitable organization generally will not be permitted a charitable deduction. By way of further example, a taxpayer who works on an archeological excavation sponsored by a charitable organization for several hours each morning, with the rest of the day free for sightseeing, will not be allowed a deduction even if the taxpayer works very hard during those few hours. In contrast, a member of a local chapter of a charitable organization who travels to New York City and spends an entire day attending the organization's regional meeting will not have a deduction disallowed just because he or she attends the theater in the evening.

7. <u>Forms Revisions</u>

To assist in the examination phase of the Special Emphasis Program, as well as to insure more accurate record keeping by charities, reporting requirements on the annual information return of exempt organizations (Form 990) may well be strengthened with respect to fund-raising events. Form 990 already requires exempt organizations to report their gross revenue from special fund-rasing events, less contributions received. The Service is considering requiring exempt organizations to keep certain specific materials to substantiate their revenue and contribution figures. These include sample fund-raising materials and records to indicate how the nondeductible amount of a payment, that is, the portion attributable to the fair market value of benefits received by patrons, is determined by the charity.

8. Remedies

As indicated above, there is no specific provision in the Code requiring charities to provide contributors with the kind of information this topic discusses. There is one penalty provision that may be applicable in a few very limited circumstances where charities are knowingly misleading contributors -- IRC 6701.

IRC 6701 provides for a civil penalty on any person who aids, assists, or gives advice in the preparation or presentation of a return or other document involving any matter arising under the Code, if that person knows that the document will be used in connection with any material matter under the tax laws, and if the person also knows that the use of the document will result in an understatement of the tax liability of another person. IRC 6701(d) provides that the penalty applies regardless of whether the taxpayer whose tax is understated either had knowledge of, or gave his consent to, the action that gave rise to the understatement. (Therefore, the Service need not prove collusion between the taxpayer whose tax is understated and the person who furnished the document that resulted in the understatement.)

There is also a new penalty provision that will give the Service additional authority to enforce the Form 990 reporting requirements on fund-raising events. Under prior law, IRC 6652(c)(1) imposed a penalty for failure to file a return required by IRC 6033. New IRC 6652(c)(1) extends this provision to include failure to furnish information required by the return, or failure to furnish correct information. This gives the Service specific authority to enforce compliance with respect to individual line items. The penalty is $10 for each day the failure continues, subject to a maximum of the lesser of $5,000 or 5% of the organization's gross receipts. This represents a modification of the penalty under prior law, which was subject to a fixed cap of $5,000.

If the Secretary makes a written demand for the return or the information, failure to comply will result in a penalty on the manager responsible for the failure to comply. As under prior law, the maximum penalty on all persons for a failure to comply shall not exceed $5,000.

The above provisions are effective for returns for years beginning after December 31, 1986.

Specific instructions on other available options will be forthcoming.

9. Fund-Raising Issues Relating to Exemption

A. Introduction

The Commissioner's message, in Publication 1391, indicated that the Special Emphasis Program would focus on fund-raising practices. A very large part of the Program involves, of course, the questions about provision of accurate information to taxpayers discussed above. Since, however, the Program will deal with abuse to the extent possible under existing law, there may well be a need to address issues inherent in common fund-raising relationships.

B. Satisfaction of the Commensurate Test; Private Benefit and Distributions for Non-Exempt Purposes

An organization that raises funds either to distribute to other charities or for its own charitable program must meet the requirement that it engages primarily in activities that accomplish one or more exempt purposes. (Reg. 1.501(c)(3)-1(c)(1)). Whether a fund-raising organization's activity may be said to accomplish exempt purposes often centers on the issue of whether there has been a sufficient turnover of funds to charity. This issue is resolved through use of the "commensurate test", which is set forth in Rev. Rul. 64-182, 1984-1 (Part 1) C.B. 186, and Rev. Rul. 67-5, 1967-1 C.B. 123. The basic principle involved is that an organization whose principal activity consists of the raising of funds must carry on a charitable program of grants and contributions commensurate with its financial resources in order to qualify for IRC 501(c)(3) exemption.

The "commensurate test" does not lend itself to rigid numerical distribution formulas -- there is no fixed percentage of income that an organization must pay out for charitable purposes. The financial resources of any organization may be affected by such factors as start-up costs, overhead, scale of operations, whether labor is volunteer or salaried, phone or postal rates, etc. In each case, therefore, the particular facts and circumstances of the fund-raising organization must be considered. Accordingly, a low payout percentage does not automatically mandate the conclusion that the fund-raising organization under consideration has a primary purpose that is not charitable. In each case, it should be ascertained whether the failure to make real and substantial contributions for charitable purposes is due to a reasonable cause.

While there is no specified payout percentage, and while special facts and circumstances may control the conclusion, distribution levels that are extremely low should invite close scrutiny. The "commensurate test" requires that organizations have a charitable program that is both real and, taking the organization's circumstances and financial resources into account, substantial. Therefore, an organization that raises funds for charitable purposes but consistently uses virtually all its income for administrative and promotional expenses with little or no distribution to charity cannot reasonably argue that its distributions are commensurate with its financial resources and capabilities.

Where a new organization applying for recognition of exemption under IRC 501(c)(3) is concerned, the organization's prospects for meeting the "commensurate test" may be ascertained through an analysis of the organization's proposed budget and its stated financial expectations, both of which should be provided in detail. In addition, the organization should be required to demonstrate that it has a concrete plan for achieving its purpose and this should be analyzed also. Although it is not specifically applicable to this situation, Reg. 1.509(a)-3(d)(3)(iv) deals with a comparable issue. Under the Reg., factors to be taken into account when issuing advance rulings to newly created organizations that are publicly supported and carry on fund-raising activities include:

> ..(W)hether the organization has developed a concrete plan for solicitation of funds from the general public on a community or area-wide basis; whether any steps have been taken to implement such plan; whether any firm commitments of financial or other support have been made to the organization by civic, religious, charitable or other similar groups within the community; and whether the organization has made any commitments to, or established any working relationships with, those organizations or classes of persons intended as the future recipients of its funds.

If the "commensurate test" is met, an organization may qualify for exempt status under IRC 501(c)(3) notwithstanding the fact that the fund-raising activity itself is not inherently charitable or is an unrelated trade or business. However, even if an organization makes a real and substantial contribution to charity commensurate with its financial resources, a substantial private purpose may still be found that will disqualify it from IRC 501(c)(3) exemption.

In P.L.L. Scholarship Fund v. Commissioner, 82 T.C. 196 (1984), the Tax Court concluded that an organization that raised funds for charity by conducting bingo games in a bar owned by the organization's directors had the substantial private purpose of making food and beverage sales for the benefit of the bar's owners. On this basis, the Tax Court concluded that the organization could not qualify for exemption under IRC 501(c)(3).

In this area, record keeping is important. This was illustrated in a recent case, Senior Citizens of Missouri, Inc. v. Commissioner, T.C.M. 1988-493 (October 12, 1988). The organization was formed to raise funds for and to distribute funds, goods, and services to handicapped adults. It raised funds solely through telephone solicitors, who were independent contractors. All solicitors were paid a commission on contributions raised. In addition to paying commissions, the organization paid "advances" to some solicitors. These "advances" amounted to 33.2% of the organization's gross income. The "advances" purportedly were made against the solicitors' commissions, but some solicitors resigned before they earned commissions equal to or exceeding their "advances". The court noted that the record was barren of facts establishing how much, if any, of the "advances" were repaid; it therefore assumed that none of them were.

The government's case focused on the "advances"; it was argued that they were neither reasonable nor for services rendered. The court agreed, and stated as follows:

> Here, petitioner has not established that the advances were paid for services performed by the solicitors. In contrast to the commissions, petitioner has failed to explain in sufficient detail the criteria and method used to determine the amount of the advances paid to each solicitor. Furthermore, the administrative record lacks complete information regarding the total advances received by each solicitor, the amount of each solicitor's unpaid advances and the reason that the advances were not repaid. Maintaining adequate records and developing criteria for the disbursement of funds, for both exempt and nonexempt purposes may appear onerous to a fledgling organization such as petitioner. Compliance with these record keeping requirements, however, is necessary to safeguard against the potential

> abuse of the organization's funds. See Church in Boston v. Commissioner, 71 T.C. 102 (1978)).
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> In conclusion, we find that petitioner has failed to establish the necessary correlation between the advances paid to the solicitors and any corresponding services performed by the solicitors. We, therefore, are unable to conclude that these unexplained advances furthered any exempt purpose.

Because these unexplained "advances" constituted almost a third of the organization's gross revenues, the court found they were "clearly substantial" and thus held that the organization could not qualify for IRC 501(c)(3) status.

(It should be noted that the court, having found that the advances were not for services rendered, concluded that it need not decide whether the advances were reasonable in amount. It did, however, "feel compelled" to address the organization's argument that any payments made to outside independent contractors are not subject to reasonable compensation standards. The court noted: "Clearly an organization cannot avoid the reasonable compensation requirement by classifying its workers as independent contractors rather than employees.")

C. Inurement

An organization that raises funds for charitable purposes is not described in IRC 501(c)(3) if it engages in certain proscribed activities. These include political campaigning or substantial lobbying. These also include inurement of net earnings to the benefit of any private shareholder or individual. Inurement is a particular problem here; fund-raising commissions may involve inurement and thus defeat a claim to IRC 501(c)(3) exemption if the commissions are unreasonable or bear no relationship to the services performed.

To briefly review the meaning of the inurement language of IRC 501(c)(3), "private shareholder or individual" is defined in Reg. 1.501(a)-1(c) as those persons having a personal and private interest in the organization. This means that the inurement proscription is focused on those who, by virtue of a special relationship with the organization, are able to influence the expenditure of its funds or the use of its assets. The regulations provide the working definition of inurement as "insider benefit." The use of the term "insider" serves to distinguish inurement from the broader concept of private benefit. (The concept of "insider benefit" is the reason why in Senior Citizens of Missouri, Inc. v. Commissioner, supra, neither the government nor the court characterized the advances to the independent contractors as inurement.)

Inurement, however, has been an issue in court cases that concerned the IRC 501(c)(3) status of organizations that raise funds for charitable purposes. The central issue in these cases has been contingent compensation arrangements.

Contingent compensation arrangement with fund-raisers have been recognized as a part of the business life of charities. Broadway Theatre League of Lynchburg Virginia v. United States, 293 F. Supp. 346 (D.C. Va., 1986); Science and Research Foundation, Inc. v. United States, 181 F.Supp. 526 (D.C. Ill., 1960). However, commission arrangements must be structured to ensure that charitable assets are safeguarded against diversion to private parties. The burden falls on the organization to establish the reasonableness of the compensation and to establish that charitable assets were not diverted. Bubbling Well Church of Universal Love, Inc. v. Commissioner, 74 T. 531 (1980); People of God Community v. Commissioner, 75 T.C. 127, 132 (1980).

The contingent compensation arrangements recognized as "part of the business life of charities" in the Broadway Theatre League and Science and Research Foundation cases, and approved, were reasonable and involved an arrangement with unrelated third parties. Insider arrangements are another matter.

In People of God Community v. Commissioner, 75 T.C. 127 (1980), the Tax Court decided that, because an organization's ministers were each paid a predetermined percentages of the gross tithes and offerings received, the organization's earnings inured to private individuals. This decision followed earlier cases, which held that a percentage compensation arrangement precludes the organization's exemption under IRC 501(c)(3) where the arrangement is merely a device for distributing profits to persons in control. See Birmingham Business College, Inc. v. Commissioner, 276 F.2d 476 (5th Cir. 1960); Gemological Institute of America v. Commissioner, 17 T.C. 1604 (1952), aff'd per curiam, 213 F.2d 205 (9th Cir. 1954).

A different result, however, was reached in World Family Corporation v. Commissioner, 81 T.C. 958 (1983). The organization had not commenced operations; its proposed activities were to make grants to support missionaries of the Church of the Jesus Christ of the Latter-Day Saints and scientific research. To attract fund-raisers, it planned to offer commissions of up to 20 percent of the value of donations to anyone, including its own officers.

The Service failed to act on the organization's application for recognition of exemption under IRC 501(c)(3), with the result that the government bore the burden of proof in this case under Tax Court Rule 217(c)(2)(ii). In its decision, the Tax Court took especial note of this factor, citing the statement in Dumaine Farms v. Commissioner, 73 T.C. 650, 660 (1980): "Since respondent bears the burden of proof with respect to such issues, it is he who must assume the risk that the facts in the record are insufficient to prove his point."

The government argued that a contingent fee fund-raising program, while not under all circumstances objectionable, must be structured in such a way that charitable assets are safeguarded. It stated there was no evidence in the administrative record that actual services are required to receive the 20 percent commission; moreover, there was nothing to show that the amount of this compensation was reasonable. Furthermore, the fact that the commission was based solely on the amount of the contribution, was payable to the organization's insiders, and was unlimited, made it unreasonable per se. Thus, there was simply no protection against the diversion of charitable assets to insiders under such circumstances.

The Tax Court found the contingency fee to be reasonable because all fund-raisers of the organization, and not merely insiders, were eligible to receive percentage fees. The court reasoned that the commissions were based on services rendered in the sense that they were contingent upon success in procuring funds.

The Service nonacquiesced in this decision. However, because the Commissioner had the burden of proof and the administrative record was insufficiently developed, the case was not appealed.

APPENDIX A

Rev. Rul. 67-246

> Deductibility, as charitable contributions under section 170 of the Internal Revenue Code of 1954, of payments made by taxpayers in connection with admission to or other participation in fund-raising activities for charity such as charity balls, bazaars, banquets, shows, and athletic events.

Advice has been requested concerning certain fund-raising practices which are frequently employed by or on behalf of charitable organizations and which involve the deductibility, as charitable contributions under section 170 of the Internal Revenue Code of 1954, of payments in connection with admission to or other participation in fund-raising activities for charity such as charity balls, bazaars, banquets, shows, and athletic events.

Affairs of the type in question are commonly employed to raise funds for charity in two ways. One is from profit derived from sale of admissions or other privileges or benefits connected with the event at such prices as their value warrants. Another is through the use of the affair as an occasion for solicitation of gifts in combination with the sale of the admissions or other privileges or benefits involved. In cases of the latter type the sale of the privilege or benefit is combined with solicitation of a gift or donation of some amount in addition to the sale value of the admission or privilege.

The need for guidelines on the subject is indicated by the frequency of misunderstanding of the requirements for deductibility of such payments and increasing incidence of their erroneous treatment for income tax purposes.

In particular, an increasing number of instances are being reported in which the public has been erroneously advised in advertisements or solicitations by sponsors that the entire amounts paid for tickets or other privileges in connection with fund-raising affairs for charity are deductible. Audits of returns are revealing other instances of erroneous advice and misunderstanding as to what, if any, portion of such payments is deductible in various circumstances. There is evidence also of instances in which taxpayers are being misled by questionable solicitation practices which make it appear from the wording of the solicitation that taxpayer's payment is a "contribution," whereas the payment solicited is simply the purchase price of an item offered for sale by the organization.

Section 170 of the Code provides for allowance of deductions for charitable contributions, subject to certain requirements and limitations. To the extent here relevant a charitable contribution is defined by that section as "a contribution or gift to or for the use of" certain specified types of organizations.

To be deductible as a charitable contribution for Federal income tax purposes under section 170 of the Code, a payment to or for the use of a qualified charitable organization must be a gift. To be a gift for such purposes in the present context there must be, among other requirements, a payment of money or transfer of property without adequate consideration.

As a general rule, where a transaction involving a payment is in the form of a purchase of an item of value, the presumption arises that no gift has been made for charitable contribution purposes, the presumption being that the payment in such case is the purchase price.

Thus, where consideration in the form of admissions or other privileges or benefits is received in connection with payments by patrons of fund-raising affairs of the type in question, the presumption is that the payments are not gifts. In such case, therefore, if a charitable contribution deduction is claimed with respect to the payment, the burden is on the taxpayer to establish that the amount paid is not the purchase price of the privileges or benefits and that part of the payment, in fact, does qualify as a gift.

In showing that a gift has been made, an essential element is proof that the portion of the payment claimed as a gift represents the excess of the total amount paid over the value of the consideration received therefor. This may be established by evidence that the payment exceeds the fair market value of the privileges or other benefits received by the amount claimed to have been paid as a gift.

Another element which is important in establishing that a gift was made in such circumstances, is evidence that the payment in excess of the value received was made with the intention of making a gift. While proof of such intention may not be an essential requirement under all circumstances and may sometimes be inferred from surrounding circumstances, the intention to make a gift is, nevertheless, highly relevant in overcoming doubt in those cases in which there is a question whether an amount was in fact paid as a purchase price or as a gift.

Regardless of the intention of the parties, however, a payment of the type in question can in any event qualify as a deductible gift only to the extent that it is shown to exceed the fair market value of any consideration received in the form of privileges or other benefits.

In those cases in which a fund-raising activity is designed to solicit payments which are intended to be in part a gift and in part the purchase price of admission to or other participation in an event of the type in question, the organization conducting the activity should employ procedures which make clear not only that a gift is being solicited in connection with the sale of the admissions or other privileges related to the fund-raising event, but also, the amount of the gift being solicited. To do this, the amount properly attributable to the purchase of admissions or other privileges and the amount solicited as a gift should be determined in advance of solicitation. The respective amounts should be stated in making the solicitation and clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment.

In making such a determination, the full fair market value of the admission and other benefits or privileges must be taken into account. Where the affair is reasonably comparable to events for which there are established charges for admission, such as theatrical or athletic performances, the established charges should be treated as fixing the fair market value of the admission or privilege. Where the amount paid is the same as the standard admission charge there is, of course, no deductible contribution, regardless of the intention of the parties. Where the event has no such counterpart, only that portion of the payment which exceeds a reasonable estimate of the fair market value of the admission or other privileges may be designated as a charitable contribution.

The fact that the full amount or a portion of the payment made by the taxpayer is used by the organization exclusively for charitable purposes has no bearing upon the determination to be made as to the value of the admission or other privileges and the amount qualifying as a contribution.

Also, the mere fact that tickets or other privileges are not utilized does not entitle the patron to any greater charitable contribution deduction than would otherwise be allowable. The test of deductibility is not whether the right to admission or privileges is exercised but whether the right was accepted or rejected by the taxpayer. If a patron desires to support an affair, but does not intend to use the tickets or exercise the other privileges being offered with the event, he can make an outright gift of the amount he wishes to contribute, in which event he would not accept or keep any ticket or other evidence of any privileges related to the event connected with the solicitation.

The foregoing summary is not intended to be all inclusive of the legal requirements relating to deductibility of payments as charitable contributions for Federal income tax purposes. Neither does it attempt to deal with many of the refinements and distinctions which sometimes arise in connection with questions of whether a gift for such purposes has been made in particular circumstances.

The principles stated are intended instead to summarize with as little complexity as possible, those basic rules which govern deductibility of payments in the majority of the circumstances involved. They have their basis in section 170 of the Code, the regulations thereunder, and in court decisions. The observance of these provisions will provide greater assurance to taxpayer contributors that their claimed deductions in such cases are allowable.

Where it is disclosed that the public or the patrons of a fund-raising affair for charity have been erroneously informed concerning the extent of the deductibility of their payments in connection with the affair, it necessarily follows that all charitable contribution deductions claimed with respect to payments made in connection with the particular event or affair will be subject to special scrutiny and may be questioned in audit of returns.

In the following examples application of the principles discussed above is illustrated in connection with various types of fund-raising activities for charity. Again, the examples are drawn to illustrate the general rules involved without attempting to deal with distinctions that sometimes arise in special situations. In each instance, the charitable organization involved is assumed to be an organization previously determined to be qualified to receive deductible charitable contributions under section 170 of the Code, and the references to deductibility are to deductibility as charitable contributions for Federal income tax purposes.

Example 1:

The M Charity sponsors a symphony concert for the purpose of raising funds for M's charitable programs. M agrees to pay a fee which is calculated to reimburse the symphony for hall rental, musicians' salaries, advertising costs, and printing of tickets. Under the agreement, M is entitled to all receipts from ticket sales. M sells tickets to the concert charging $5 for balcony seats and $10 for orchestra circle seats. These prices approximate the established admission charges for concert performances by the symphony orchestra. The tickets to the concert and the advertising material promoting ticket sales emphasize that the concert is sponsored by, and is for the benefit of M Charity.

Notwithstanding the fact that taxpayers who acquire tickets to the concert may think they are making a charitable contribution to or for the benefit of M Charity, no part of the payments made is deductible as a charitable contribution for Federal income tax purposes. Since the payments approximate the established admission charge for similar events, there is no gift. The result would be the same even if the advertising materials promoting ticket sales stated that amounts paid for tickets are "tax deductible" and tickets to the concert were purchased in reliance upon such statements. Acquisition of tickets or other privileges by a taxpayer in reliance upon statements made by a charitable organization that the amounts paid are deductible does not convert an otherwise nondeductible payment into a deductible charitable contribution.

Example 2:

The facts are the same as in Example 1, except that the M Charity desires to use the concert as an occasion for the solicitation of gifts. It indicates that fact in its advertising material promoting the event, and fixes the payments solicited in connection with each class of admission at $30 for orchestra circle seats and $15 for balcony seats. The advertising and tickets clearly reflect the fact that the established admission charges for comparable performances by the symphony orchestra are $10 for orchestra circle seats and $5 for balcony seats, and that only the excess of the solicited amounts paid in connection with the admission to the concert over the established prices is a contribution to M.

Under these circumstances a taxpayer who makes a payment of $60 and receives two orchestra circle seat tickets can show that his payment exceeds the established admission charge for similar tickets to comparable performances of the symphony orchestra by $40. The circumstances also confirm that that amount of the payment was solicited as, and intended to be, a gift to M Charity. The $40, therefore, is deductible as a charitable contribution.

Example 3:

A taxpayer pays $ 5 for a balcony ticket to the concert described in Example 1. This taxpayer had no intention of using the ticket when he acquired it and he did not, in fact, attend the concert.

No part of the taxpayer's $ 5 payment to the M Charity is deductible as a charitable contribution. The mere fact that the ticket to the concert was not used does not entitle the taxpayer to any greater right to a deduction than if he did use it. The same result would follow if the taxpayer had made a gift of the ticket to another individual. If the taxpayer desired to support M, but did not intend to use the ticket to the concert, he could have made a qualifying charitable contribution by making a $5 payment to M and refusing to accept the ticket to the concert.

Example 4:

A receives a brochure soliciting contributions for the support of the M Charity. The brochure states: "As a grateful token of appreciation for your help, the M Charity will send to you your choice of one of the several articles listed below, depending upon the amount of your donation." The remainder of the brochure is devoted to a catalog-type listing of articles of merchandise with the suggested amount of donation necessary to receive each particular article. There is no evidence of any significant difference between the suggested donation and the fair market value of any such article. The brochure contains the further notation that all donations to M Charity are tax deductible.

Payments of the suggested amounts solicited by M Charity are not deductible as a charitable contribution. Under the circumstances, the amounts solicited as "donations" are simply the purchase prices of the articles listed in the brochure.

Example 5:

A taxpayer paid $ 5 for a ticket which entitled him to a chance to win a new automobile. The raffle was conducted to raise funds for the X Charity. Although the payment for the ticket was solicited as a "contribution" to the X Charity and designated as such on the face of the ticket, no part of the payment is deductible as a charitable contribution. Amounts paid for chances to participate in raffles, lotteries, or similar drawings or to participate in puzzle or other contests for valuable prizes are not gifts in such circumstances, and therefore, do not qualify as deductible charitable contributions.

Example 6:

A women's club, which serves principally as an auxiliary of the X Charity, holds monthly membership luncheon meetings. Following the luncheon and any entertainment that may have been arranged, the members transact any membership business which may be required. Attendance of the luncheon meetings is promoted through the advance sale of tickets. Typical of the form of the tickets is the following:

Suburban Women's Club of X County
LUNCHEON--ENTERTAINMENT
Benefit of
The Handicapped Childrens Fund
of
X Charity
Readings by GASTON
Noted Lecturer and Author
THE Z COUNTRY CLUB
Tuesday, October 31, 1967
12:00 Noon $ 5.50 Donation

While the ticket does not specifically state that the amount is tax deductible, the characterization of the $5.50 price of the ticket as a "donation" is highly misleading in that it is done in a context which suggests that the price of the ticket is a charitable contribution and, therefore, tax deductible. On the facts recited, no part of the payment is deductible, since there is no showing that any part of the price of the ticket is in fact a gift of an amount in excess of the fair market value of the luncheon and entertainment.

Example 7:

In support of its summer festival program of 10 free public concerts, the M Symphony, a charitable organization, mails out brochures soliciting contributions from its patrons. The brochure recites the purposes and activities of the organization, and as an inducement to contributors states that:

> "A contribution of $ 20 entitles the donor to festival membership for the season and free admission to the premiere showing of the motion picture * * * starring * * * and * * *.
>
> Cocktails--7:00 P.M. Curtain--8:15 P.M. This special premiere performance is not open to the public.
>
> * * * * *
>
> "Your contribution will benefit an important community function; it also entitles you to choice reserved seats for all summer festival concerts and events."

The envelope furnished for mailing in payments contains the following:

> "Enclosed is my tax-deductible membership contribution to the M Symphony summer concert program in the amount of $.
>
> " __ Send me tickets to the May 1 premiere performance.
>
> " __ I do not desire to attend the special premiere performance for festival members, but I am enclosing my contribution."

A taxpayer mails in a payment of $ 20, indicating on the envelope form that he desires a ticket to the premiere showing of the film.

No part of the payment is deductible as a charitable contribution. Payment of the $20 entitles an individual not only to the privilege of attending the cocktail party and the premiere showing of the film, but also the privilege of choice reserved seats for the summer festival concerts. Under the circumstances, no part of the payment qualifies as a gift, since there is no showing that the payment exceeds the fair market value of the privileges involved. Even if a "contributor" indicates he does not desire to attend the cocktail party and premiere showing of the film, it would still be incorrect for the organization to characterize the $20 payment as a deductible charitable contribution, since under these circumstances the fair market value of the privilege of having choice reserved seats for attending the concerts would, in all likelihood, exceed the amount of the payment. However, if the taxpayer wishes to support the M Symphony, and advises the organization that he does not desire the ticket to the premiere and does not want seats reserved for him, the amount contributed to M is deductible as a charitable contribution.

Example 8:

In order to raise funds, W Charity plans a theater party consisting of admission to a premiere showing of a motion picture and an after-theater buffet. The advertising material and tickets to the theater party designate $5 as an admission charge and $10 as a gift to W Charity. The established admission charge for premiere showings of motion pictures in the locality is $5.

Notwithstanding W's representations respecting the amount designated as a gift, the specified $10 does not qualify as a deductible charitable contribution because W's allocation fails to take into account the value of admission to the buffet dinner.

Example 9:

The X Charity sponsors a fund-raising bazaar, the articles offered for sale at the bazaar having been contributed to X by persons desiring to support X's charitable programs. The prices for the articles sold at the bazaar are set by a committee of X with a view to charging the full fair market value of the articles.

A taxpayer who purchases articles at the bazaar is not entitled to a charitable contribution deduction for any portion of the amount paid to X for such articles. This is true even though the articles sold at the bazaar are acquired and sold without cost to X and the total proceeds of the sale of the articles are used by X exclusively for charitable purposes.

Example 10:

The members of the M Charity undertake a program of selling Christmas cards to raise funds for the organization's activities. The cards are purchased at wholesale prices and are resold at prices comparable to the prices at which similar cards are sold by regular retail outlets. On the receipts furnished to its customers, the difference between the amount received from the customer and the wholesale cost of the cards to the organization is designated by the organization as a tax-deductible charitable contribution.

The organization is in error in designating this difference as a tax-deductible charitable contribution. The amount paid by customers in excess of the wholesale cost of the cards to the organization is not a gift to the organization, but instead is part of the purchase price or the fair market value of the cards at the retail level.

Example 11:

In support of the annual fund-raising drive of the X Charity, a local department store agrees to award a transistor radio to each person who contributes $50 or more to the charity. The retail value of the radio is $15. B receives one of the transistor radios as a result of his contribution of $100 to X. Only $85 of B's payment to X qualifies as a deductible charitable contribution. In determining the portion of the payment to a charitable organization which is deductible as a charitable contribution in these circumstances, the fair market value of any consideration received for the payment from any source must be subtracted from the total payment.

Example 12:

To assist the Y Charity in the promotion of a Halloween Ball to raise funds for Y's activities, several individuals in the community agree to pay the entire costs of the event, including the costs of the orchestra, publicity, rental of the ballroom, refreshments, and any other necessary expenses. Various civic organizations and clubs agree to undertake the sale of tickets for the dance. The publicity and solicitations for the sale of the tickets emphasize the fact that the entire cost of the ball is being borne by anonymous patrons of Y and by the other community groups, and that the entire gross receipts from the sale of the tickets, therefore, will go to Y Charity. The price of the tickets, however, is set at the fair market value of admission to the event.

No part of the amount paid for admission to the dance is a gift. Therefore, no part is deductible as a charitable contribution. The fact that the event is conducted entirely without cost to Y Charity and that the full amount of the admission charge goes directly to Y for its uses has no bearing on the deductibility of the amounts paid for admission, but does have a bearing on the deductibility of the amounts paid by the anonymous patrons of the event. The test is not the cost of the event to Y, but the fair market value of the consideration received by the purchaser of the ticket or other privileges for his payment.

APPENDIX B

Q.s and A.s

Q1: Is an admission charge to a charitable benefit (a dance, a museum exhibition, etc.) deductible?

A1: To be deductible as a charitable contribution, a payment to a charity must be a gift, that is, a voluntary transfer of money or other property that is made with no expectation of procuring financial benefit commensurate with the amount of the transfer. Where consideration in the form of substantial benefits is received in connection with payments by patrons of fund-raising activities, there is a presumption that the payments are not gifts. An admission charge to a charitable benefit accordingly is not deductible unless and to the extent the charge is higher than the fair market value of the admission. Where a payor receives full value for his payment, an admission charge represents nothing more than a transfer of money for an item of equivalent value. Of course, to the extent that a payor can establish (consistent with the principles discussed in Revenue Ruling 67-246, 1967-2 C.B. 104) that the admission charge exceeds the amount that would be charged in an arm's-length situation by the sponsor of a non-charitable event, the payor may claim the excess as a charitable contribution.

Q2: If a purchaser pays a fair market value price to a charitable organization for goods or services furnished to the charitable organization at a wholesale or other lower cost, may the purchaser claim any amount of the purchase price as a charitable deduction?

A2: No, because the purchaser has received full value for his payment. Notwithstanding the fact that the charity will be able to retain the difference between the retail and wholesale or lower price and use such amount for its exempt purposes, the purchaser has made no gift to the charity. The party who furnished the goods or services to the charity may well be entitled to a charitable deduction.

Q3: What amount, if any, may be deducted by the purchaser of a raffle or lottery ticket solicited as a charitable contribution?

A3: No amount may be deducted by the purchaser of such a ticket. The purchaser of a raffle or lottery ticket acquires something of value as the result of his purchase -- the opportunity to win a prize -- and he is therefore presumed to have received full value for his payment. [See Goldman v. Commissioner, 46 T.C. 136 (1966), aff'd, 388 F.2d 476 (6th Cir. 1967); Rev. Rul. 83-130, 1983-2 C.B. 148]

Q4: Where the purchaser of an admission or of a membership entitling the purchaser to a series of admissions intends not to use the admission for his own purposes, can he relinquish the ticket and claim a deduction for the full amount paid?

A4: The mere fact that a purchaser of tickets or other admission privileges has no intention of using them does not entitle the purchaser to a greater charitable contribution deduction than would be allowable if he were to use the tickets. The test of deductibility is not whether the right to admission is exercised, but whether or not it is accepted or rejected by the purchaser. If a purchaser desires to support a charity but does not intend to use the ticket or admission privilege, he can make a qualifying charitable contribution by making a payment to the charity and refusing to accept the ticket or admission privilege.

Q5: May any amount be claimed as a charitable contribution deduction by a person who transfers property or makes available his services to a charity, knowing that the charity will sell his property or services, for example, by conducting a raffle or auction?

A5: A transferor of property may be entitled to a charitable contribution deduction. Any deduction would be limited in amount by the rules governing contributions of tangible property (I.R.C. Section 170(e)(1)(B)). A person who transfers his services to a charity is not entitled to a charitable contribution deduction. Treas. Reg. 1.170A-1(g). Certain out-of-pocket expenses incurred while contributing services to charity are deductible charitable contributions, however.

Q6: Is a deduction allowable for travel expenses incurred in performing services away from home on behalf of a qualified charitable organization?

A6: No deduction is allowable for such expenses, whether paid directly by the individual or indirectly through a contribution to the organization, unless there is no significant element of personal pleasure, recreation, or vacation in the travel. For example, a taxpayer who sails from one Caribbean island to another and spends eight hours a day counting whales and other forms of marine life as part of a project sponsored by a charitable organization generally will not be permitted a charitable deduction. By way of further example, a taxpayer who works on an archeological excavation sponsored by a charitable organization for several hours each morning, with the rest of the day free for sightseeing, will not be allowed a deduction even if the taxpayer works very hard during those few hours. In contrast, a member of a local chapter of a charitable organization who travels to New York City and spends an entire day attending the organization's regional meeting will not have a deduction disallowed just because he or she attends the theater in the evening.

Q7: Must the amount of the charitable contribution deduction otherwise available to the transferor of property that is to be used by a charity as a prize in a raffle or lottery be discounted to any extent because the transferor will be identified as the source of the property and the benefactor of the charitable transferee?

A7: No discount will be required. The identification of the transferor as the benefactor of the charity is not treated as a substantial benefit to the transferor. (See, e.g.. Rev. Rul. 66-358, 1966-2 C.B. 218).

Q8: How does a taxpayer determine the amount deductible as a charitable contribution for an entrance fee in a sporting event (e.g., a pro-am golf or tennis tournament) where a portion of the entrance fee is donated to one or more charities?

A8: The taxpayer must take into account the full fair market value of the benefits he receives. The amount available as a charitable contribution deduction may be considerably less than the full amount of the entrance fee, or nothing at all, if the taxpayer is unable to establish that the amount of the entrance fee is in excess of fair market value. Although the fair market value of the right to participate in such an event may be difficult to establish, the purchaser of such right must bear the burden of proof in this regard.

Q9: Is a charitable contribution deduction available for a payment to a charitable organization where the payor knows or has reason to believe that the payee will use the funds to pay the living expenses of one or more private individuals?

A9: A charitable contribution deduction will be available if the payor can establish that the gift was intended for the use of the organization and not as a gift to an individual. The payor must show that use of the funds is entirely within the discretion of the payee and, if the payee decides to use the contributed funds to pay individual living expenses, that the payee's application of the funds is consistent with the payee's exempt charitable purposes.

Q10: May a taxpayer deduct payments that are solicited by religious organizations for religious and related services?

A10: Deductibility depends upon the type of services provided by the religious organization. For example, parochial school tuition payments are not deductible as charitable contributions because the payments are made with the expectation of a definite economic benefit. In contrast to tuition payments, religious observances generally are not regarded as yielding private benefits to the donor, who is viewed as receiving only incidental benefits when attending the observances. The primary beneficiaries are viewed as being the general public and members of the faith. Thus, payments for saying masses, pew rents, tithes, and other payments involving fixed donations for similar religious services, are fully deductible as charitable contributions.

Q11: In the case of a payment of money or other transfer of property to a charitable organization where all or some portion of the payment or transfer may not be deductible as a charitable contribution, whose duty is it to determine the availability and amount of the charitable contribution deduction?

A11: Under current law, the ultimate burden of proof resides with the person claiming the benefit of the charitable contribution deduction -- the payor or transferor. However, the transferee charity has a duty neither to misrepresent the value of the contribution nor to misstate the legal consequences of the payment or transfer in question. For example, where the fund-raising activity is designed to solicit payments that are intended to be in part a gift and in part the purchase of an admission, the charity should make clear not only that part of each payment represents payment for a non-deductible admission charge, but also the amount which is in fact deductible as a gift. The amounts properly attributable to each part of the payment should be stated in making the solicitation and should be clearly indicated on any ticket, receipt, or other evidence issued in connection with the payment. By doing this, the charity will help its patrons comply with the income tax laws, as well as avoiding possible embarrassment to itself and its patrons. Failure to designate such amounts may adversely affect the payor's ability to prove the deductibility of his contribution. The Service will be monitoring and reporting to the Congress on how well charities are advising contributors on the deductibility of their contributions.

Q12: In the case of a payment or transfer to a charitable organization where all or a portion of such transfer or payment may not be deductible as a charitable contribution, is it appropriate for the charitable transferee, in soliciting the payment or acknowledging receipt, to make a statement to the effect that "our organization is a charitable organization, contributions to which are deductible for federal income tax purposes to the full extent permitted by law"?

A12: A solicitation or acknowledgment of a payment that uses this language could under certain circumstances be construed as misleading. The use of such language does nothing to establish a presumption in favor of a deduction of any kind.