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Comments by the American Council on Gift Annuities (ACGA) and the National Committee on Planned Giving (NCPG) on Proposed Regulations on the Substantiation and Reporting Requirements for Cash and Noncash Charitable Contribution Deductions.

November 5, 2008

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We request that the regulations be amplified by giving guidance and examples for the following:

1. Charitable remainder interests in personal residences and farms;
2. Grantor charitable lead annuity trusts and grantor charitable lead unitrusts. (The proposed regulations exempt charitable remainder annuity trusts and charitable remainder unitrusts from the substantiation requirements. Are grantor charitable lead trusts also exempt from those requirements?);
3. A gift by a beneficiary of his or her existing life interest in a charitable remainder annuity trust, a charitable remainder unitrust, a pooled income fund, a charitable gift annuity, and a retained interest in a personal residence or farm;
4. A gift by the remainderperson of his or her remainder interest in a charitable lead annuity trust or a charitable lead unitrust; and
5. A charitable gift of a life-insurance policy.

For all of the above, guidance is requested on both the substantiation and appraisal requirements. For example, for a charitable gift of life insurance, who is a qualified appraiser — an individual with verifiable education and experience in valuing the relevant type of property for which the appraisal is performed? As a practical matter, how does one find such an appraiser? Are there individuals who are in the business of making those appraisals?

We also ask that the Treasury and the IRS by regulation or otherwise provide relief for an individual who cannot obtain a proper and timely substantiation receipt from the donee-charity despite the individual's good faith attempts to obtain such a receipt. There is no penalty imposed on a charity for not providing a receipt and a donor who cannot obtain a receipt using his or her best efforts to obtain one is denied an income tax charitable deduction. The Internal Revenue Service in its Continuing Professional Education Text (FY 2000) for Exempt Organization Personnel stated:

The penalty for failure to obtain the substantiation statement required by IRC §170(f)(8) for gifts of \$250 or over falls, in the first instance, on the contributor. Although charities are involved in issuing the statement, Congress does not impose on charities a penalty for failure to furnish an IRC §170(f)(8) statement. The belief was that where donors of \$250 or more could not take a deduction because they were not given properly completed substantiation statements, the donors would punish the charity by not giving to them in the future. Charities on the other hand would see substantiation as an element in good donor relations.

A donor's ability to "punish the charity by not giving to them in the future" is of no help to a donor who loses his or her significant income tax charitable deduction. The term Draconian is often overused — but we believe that term applies to a requirement imposed on a donor who through no fault of his or her own is unable to meet that requirement.

Thank you for the opportunity of commenting on the proposed regulations. ACGA and NCPG welcome rules that prevent taxpayers from claiming deductions for gifts not made or for overvaluing gifts that are made. We appreciate the guidance given in the proposed regulations and ask that they be fleshed out to cover the topics that we have raised so that taxpayers will know how to comply with the rules.

About the American Council on Gift Annuities (formerly the Committee on Gift Annuities). ACGA, formed in 1927, is an IRC §501(c)(3) organization described in IRC §170(b)(1)(A)(vi). ACGA's board of directors and its legal counsel are all unpaid volunteers. ACGA is sponsored by over 1200 social welfare charities, health organizations, environmental organizations, colleges, universities, religious organizations and other charities.

About the National Committee on Planned Giving. NCPG is an IRC §501(c)(3) organization described in IRC §170(b)(1)(A)(vi). Its board members are all unpaid volunteers. NCPG is an association for professionals in the charitable gift planning field. Its members are: planned and major gifts officers for charities, fundraising consultants, attorneys, accountants, financial planners and donor advisors. NCPG has a network of more than 130 local planned giving councils that provide community-based education. NCPG represents over 10,000 individual and council members.