

**TO:** Client

**FROM:** Dianne Chipps Bailey

**DATE:** January 2, 2014

**RE:** Charitable Solicitation - Licensing, Disclosures and Acknowledgement

The purpose of this memorandum is to describe briefly the state and federal rules applicable to the solicitation of charitable contributions by Section 501(c)(3) organizations, including fraternal foundations. Please do not hesitate to contact me with any questions or concerns at (704) 377-8323 or dbailey@rbh.com.

#### LICENSING AND DISCLOSURES

Thirty-eight states and the District of Columbia require certain charitable organizations to obtain and annually renew a solicitation license.<sup>1</sup> Licensed organizations may be required to include certain information on all solicitation materials including its name, address and purposes for which contributions will be used. In addition, some states require that specific disclosure statements appear on all fundraising materials distributed by licensed organizations.<sup>2</sup>

When nonprofits solicit contributions of \$75 or more for which valuable benefits are provided (as discussed below), the federal tax rules require that the following disclosure statement also be included on the solicitation materials: “The amount of the contribution which is deductible for federal income tax purposes is limited to the excess over the value of the goods or services provided by **[insert full name of organization]**. The tax-deductible portion of your gift is \$\_\_\_\_\_.”

Finally, nonprofits may wish to include the following general statement on fundraising materials: “**[insert full name of organization]** is qualified as a charitable organization under Section 501(c)(3) of the Internal Revenue Code. Contributions to **[insert full name of organization]** are tax-deductible to the extent permitted by law.” It is important not to state that

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<sup>1</sup> Certain charitable organizations (i.e., organizations that raise less than \$25,000 per year and do not pay compensation officers, directors or professional fundraisers) may not be required to obtain a solicitation license. Exemptions also exist for certain religious institutions, schools, hospitals and hospital foundations.

<sup>2</sup> Please note that states may impose additional reporting and disclosure obligations on a nonprofit organization in the event that such organization engages the services of a professional fundraising consultant or solicitor.

contributions are “fully” deductible, as various federal and state rules may limit individual donors’ ability to claim a tax deduction.

A special note about fundraising using the Internet: This area of the law is unsettled at this time, but some regulators have taken the position that solicitation of charitable contributions through an interactive website constitutes solicitation within all fifty states and the District of Columbia.<sup>3</sup> The most conservative response to this ambiguity if your organization solicits contributions on-line is to (a) register to solicit charitable contributions in all states where such registration is required using the form published by the state (preferred approach) or the Unified Registration Statement (see, [www.multistatefiling.org](http://www.multistatefiling.org)), or (b) include a disclaimer on the website clearly stating that contributions only will be accepted from states in which the organization is registered. Without question, organizations that solicit contributions on-line should register in any state (y) from which it regularly receives contributions and (z) into which it sends e-mail solicitations.

## ACKNOWLEDGMENT

Federal tax rules require that nonprofit organizations provide donors with a timely written acknowledgement of contributions in two situations: (a) whenever a nonprofit receives contributions of \$250 or more, and (b) when a nonprofit solicits or receives contributions of \$75 or more in exchange for which it provides valuable goods and services. Enclosed with this memorandum is a form that may be used to acknowledge charitable contributions received.<sup>4</sup> Note that a recent change in federal law requires donors to maintain a receipt from the donee organization or a bank record to claim a federal income tax charitable deduction for gifts of any amount.<sup>5</sup> Accordingly, it is advisable for nonprofits to acknowledge each and every gift.

### Acknowledgment of gifts of \$250 or more

First, to receive a federal income tax charitable deduction for a contribution of \$250 or more, a donor making a contribution must receive a “qualifying contemporaneous written substantiation” from the donee organization. The attached acknowledgment form may be used for this purpose. To satisfy the contemporaneousness requirement, the form must be received by the donor on or before the donor’s tax filing deadline for the calendar year in which the contribution is made. This rule applies to individual contributions of \$250 or more, *inclusive* of the deductible and nondeductible portions of the contribution. Multiple gifts of less than \$250

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<sup>3</sup> The National Association of State Charities Officials have issued the following nonbinding policy statement: Organizations that are domiciled within a state and use a website to solicit contributions must register with that state. Organizations located outside of a particular state must register if they use their website to specifically target people in that state, or receive contributions from the state on a repeated and ongoing basis or a substantial basis through its website. “Ongoing” and “substantial” are not specifically defined. Organizations should note that email solicitations directed to persons within a particular state likely automatically trigger that state’s registration requirements.

<sup>4</sup> Of course, nonprofits may wish to enclose a traditional “thank you” letter with the acknowledgment form or incorporate the information on the form into a traditional “thank you” letter. As you will see, this form is designed primarily to comply with federal tax rules; it neither expresses gratitude for the contribution nor explains in any detail the charitable purposes for which it will be used.

<sup>5</sup> This change is effective for contributions made after August 17, 2006. Prior rules required only that the donor maintain a contemporaneous diary or log of charitable contributions under \$250.

made in a single taxable year by the same donor are not aggregated for purposes of this rule. As noted above, even though federal law does not require acknowledgement of gifts under \$250, it is recommended that nonprofits send acknowledgements to all donors because receipts now generally are required to claim federal income tax deductions.

#### Acknowledgment of gifts of \$75 or more in exchange for which benefits are provided

Second, a nonprofit must provide a donor with written acknowledgment of any contribution of \$75 or more by virtue of which the donor is entitled to valuable goods or services provided by the nonprofit, whether or not the donor actually exercises his or her right to the benefit. The attached acknowledgment form may be used for this purpose as well. The acknowledgment form must include a good faith estimate of the value of the goods or services provided to donors in exchange for the contribution. Please note that fair market value is not necessarily the cost to the nonprofit. For example, tickets to a fundraising dinner would be tax-deductible only to the extent that the cost of the ticket exceeds the fair market value of the meal and any other items provided to attendees, whether those items are purchased by or donated to the nonprofit. In general, any reasonable methodology for computing the fair market value is acceptable.

If benefits provided to the donor are insubstantial in value, the donee organization is not required to discount the deductible portion of the contribution. Goods and services provided in consideration of a contribution are deemed to be insubstantial if one of the two following criteria are satisfied: (a) the fair market value of the benefit provided to the donor is not more than 2% of the total amount of the gift, or \$104.00, whichever is less, or (b) the amount contributed is \$52.00 or more and the only benefits received in connection with the gift are token items that bear organization's logo and have an aggregate cost of less than \$10.40.<sup>6</sup>

#### Raffles benefiting charitable organizations

Tax receipts should not be sent to individuals who purchase raffle tickets benefiting nonprofit organizations, regardless of whether the purchaser wins a prize. Raffle tickets are not deductible as charitable contributions for federal income tax purposes. The Internal Revenue Service has determined that purchasing the chance to win a prize has value that is essentially equal to the cost of the raffle ticket. Nonprofits conducting raffles should send Forms W2-G to the winners of prizes of \$600 or more (if the value of the prize is 300 times the price of the ticket) indicating the fair market value of the prize, with copies to the Internal Revenue Service and the applicable state Department of Revenue.

#### Notes on completing the acknowledgment form

As you will see, the acknowledgment form includes a space for the description of any personal or real property *contributed to the nonprofit*. The nonprofit should provide a donor only with a literal description of the property. The nonprofit is not required to declare the fair market value of the donated property, which ultimately is the responsibility of the donor. In addition,

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<sup>6</sup> These amounts are adjusted annually for inflation; the amounts included here are for the year 2014. The amounts for 2013 were: \$10.20, \$51.00 and \$102.00.

the acknowledgment form includes a space for the description of goods or services *provided by the nonprofit* to the donor in consideration of the donor's contribution. In this case, the nonprofit must provide the donor with a good faith estimate of the fair market value of the goods or services provided (so that amount may be subtracted from the total contribution to calculate the tax-deductible portion). If goods or services of insubstantial value (as defined above) are provided by the nonprofit, the nonprofit should include the following statement: "The estimated value of the item given is insubstantial, and the full amount of the donor's gift is tax-deductible to the extent permitted by law." Finally, the form includes a space for the signature of a representative of the nonprofit, which is optional.

Enclosure

Acknowledgment of Charitable Contribution

In accordance with Section 170(f)(8) of the Internal Revenue Code of 1986, as amended, as representative of the named donee, I hereby acknowledge receipt of the contribution described below:

Name and Address of Donor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name and Address of Donee: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of Contribution: Cash Contribution: \_\_\_\_\_  
Charitable Portion: \_\_\_\_\_

Description of Personal or Real Property Contributed:

Date Donee Received Contribution: \_\_\_\_\_

[Description and Good Faith Estimate of Value of Goods or Services Provided to Donor in Consideration of the Contribution:] or [Insert one of the following statements: The estimated value of the items given in consideration of the donor's gift is insubstantial, and the full amount of the gift is tax-deductible to the extent permitted by law. – or – No item of value was given in consideration of donor's gift, and the full amount of the donor's gift is tax-deductible to the extent permitted by law.]

Thank you for your support.

[Signature]

\_\_\_\_\_  
Name and Title of Representative

\_\_\_\_\_  
Date of Acknowledgment

**[Insert applicable licensing disclosure statements here.]**